

Annual Review On Sports Dispute Resolution In China (2020)



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Commercial Dispute Resolution In China: An Annual Review And Preview*

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PART 1. Overview

In 2019, we have 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* (hereinafter referred to as the “Outline”) 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 sports diplomacy for a new era.

Led by the government strategy, the Chinese sports industry has grown into a business whose estimated worth in 2018 reached RMB 2,657.9 billion,^[1] more than double the total worth of the industry since the issuance of the *Several Opinions of the State Council of the People's Republic of China on Accelerating the Development of the Sports Industry and Promoting Sports Consumption* (Guo Fa [2014] No. 46, hereinafter referred to as "Policy No. 46"),^[2] which was promulgated in 2014 and often hailed as the constitutional policy paper laying the foundation for sports development in China.

While an increasing number of countries hesitate to host mega sporting events, and with the decline of Russia as a result of its doping issues, China seems to be the only jurisdiction with plans to host several major international multisport sporting events in a row, including the first FIFA Club World Cup after reform in 2021^[3], the Olympic Winter 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 the center stage.

Part 2 of this review paper sorts through the important legal and policy documents of the sports industry. Setting the framework for the rules of the sports industry is the key to understanding disputes that arise within the sector and how they are resolved. Characteristic of a top-down managerial system, sports in China is heavily regulated and directed with policy planning. Somewhat contradictorily, the objective of policy papers issued since *Policy No. 46* is to loosen the government regulations in the sports sector and to defer to market economics in this sector. Such intriguing interplay between government regulation and market power defines the Chinese sports sector in its transformation, often with its hands tied by political cultures and traditions. Marred by occasional setback, the reform is inevitable and ongoing.

The common threads of the policy papers highlight the theme of sports reform in China and steps being taken to energize the market to accomplish its potential. To reach this end, obstacles either at a regulatory level or in practice need to be cleared; also, measures that contribute to an active market have been put in place, such as promoting professional sports and acknowledging the commercial value of sports-related intangible assets, including individual athletes' commercial rights to their name, image, voice, signature, personal data, and likeness.

Part 3 selects three cases in the Chinese sports sector of representative value, which either occurred or concluded in 2019. The cases are selected in terms of potential precedential value and level of public attention. The case of *World Anti-Doping Agency ("WADA") vs. Sun Yang and Fédération Internationale de Natation Association ("FINA")* (CAS 2019/A/6148) put Chinese star swimmer Sun Yang's athletic career on trial, notably in a public hearing, which understandably drew attention worldwide. The public hearing requested by Sun Yang was the second in Court of Arbitration for Sport ("CAS") history and the first ever to be live streamed online. The case offers much to consider regarding both procedural nuances and issues in substance. It is worth noting that just three days after Sun Yang's public hearing, the Supreme People's Court issued 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 Substance*, effective on 1 January 2020.^[4]

The second case concerns the ruling by the Dalian Intermediate People's Court to recognize and enforce a CAS award for the first time in China under the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (hereinafter referred to as the "New York

Convention”). However, as the case itself bears some distinctive features, its precedential value may be limited.

The last case analyzes the series of cases filed by football players against Dalian Transcendence Football Club, with similar fact patterns and almost identical outcome. This series of cases is representative of the jurisdictional vacuum that has trapped many professional players and coaches who claim back pay against their former clubs.

Part 4 embarks on discussion of issues that arise from the cases in PART 3, with possible solutions proposed, as well as the dispute resolution aspects of the upcoming 2022 Olympic Winter Games in Beijing. PART 5 concludes this report with an overview and thoughts for the future.

This is the first time in this volume that sports has been addressed in an independent chapter separate from the chapter on entertainment. It is a fitting and important development given the substantial changes occurring in the Chinese regulatory scheme for sports, and the rapid rise in the value of the Chinese sports sector that is only going to increase in the years to come. In addition, the nature of sports is fundamentally different than the dynamics that go into the structure of entertainment law. Undeniably, in some ways, sports is the production of live entertainment, but the rules governing participation in sports are more complex. We hope that this report provides the readers with some sense of that.

PART 2. MAJOR UPDATES OF LAWS, REGULATIONS, AND OTHER POLICY DOCUMENTS IN THE SPORTS SECTOR

2.1 *Law Of The People’s Republic Of China On Physical Culture And Sports*

The *Law of the People’s Republic of China on Physical Culture and Sports* (hereinafter referred to as the “PRC Sports Law”) enacted 25 years ago is the only statutory document dedicated to the Chinese sports sector, with minor amendments in 2009 and 2016, respectively.^[5] The *PRC Sports Law* categorizes sports in three types (recreational, educational, and competitive) and describes how sports should be organized as of 1995. While the social economic scene in China has since transformed remarkably and the focus of sports gradually evolved from its competitive, diplomatic function to having more commercial and recreational aspects, like much else in the law lagging behind commercial reality, the *PRC Sports Law* remains almost unchanged.

The obsolete nature of the *PRC Sports Law* is probably the reason why it is rarely in use or referenced, with only the one exception of Art 32 (2016 version in effect), which provides “any dispute in competitive sport should be submitted to the sports arbitration institution for mediation and arbitration; the incorporation of the sports arbitration institution and its jurisdiction shall be stipulated separately by the State Council”. Article 32 was often mentioned to demonstrate the urgent need to update the *PRC Sports Law*, because the sports arbitration institution intended in this provision has never been established. However, it is not uncommon for the people’s court to invoke this provision in football-related disputes, which in effect

mistakes the dispute resolution body within the Chinese Football Association (“CFA”) for the sports arbitration institution envisaged under Art 32. Such confusion has far-reaching impact, which is analyzed in the case of *Dalian Transcendence Football Club*.^[6]

2.2 National Sport Policies At The State Council Level

Despite the absence of sports legislation, China’s sports industry has flourished with the support of a series of government policies. In fact, since 1949, government planning has always played a pivotal role in Chinese sports sector, resulting in a top-down rather than bottom-up approach to the organization of sports.

In addition to *Policy No. 46* and the *Outline* mentioned above, the State Council and its General Office have issued the following policies to incentivize the sports industry:

- *the Guiding Opinions of the General Office of the State Council on Expediting the Development of the Sports Competition and Performance Industry* (Guo Ban Fa [2018] No. 121, hereinafter referred to as “Policy No. 121”)^[7]; and
- *the Opinions of the General Office of the State Council on Supporting National Fitness and Sports-Related Consumption in Promoting the High-Quality Development of the Sports Industry* (Guo Ban Fa [2019] No. 43, hereinafter referred to as “Policy No. 43”).^[8]

Policy No. 46, *the Outline*, *Policy No. 121*, and *Policy No. 43* are collectively referred to as the “State Council Sport Policies”.

The *State Council Sport Policies* suggest that China has positioned the sports industry as part of its national strategy to improve its citizens’ health conditions, enhance national unity, as well as to raise China’s international influence. There are also socioeconomic rationales behind China’s state policy to promote sport. *Policy No. 46* identifies the sports industry as a sunrise industry containing new points of economic growth, with the potential to become a vital force for economic restructuring and upgrading. Since then, all sport policies issued by the State Council and local governments have elaborated on the principles enshrined in *Policy No. 46*, among which the *Outline* and *Policy No. 121* further elevated the status of sports industry from the “vital force for economic restructuring and upgrading” to “pillar of national economy”.

2.3 Effect And Influence Of The State Council Sport Policies On Legal And Regulatory Framework In Sports

2.3.1 Streamline Government Regulations And Remove Administrative Hurdles To Energize The Market

Notably, *Policy No. 46* abolished the approval procedures for commercial and mass sports events, reforming the government function from pre-competition approval to supervision only. This has directly contributed to the prosperity of the sports events industry in China, as numerous international sporting events have landed in China since 2014, along with multiple homegrown events brands starting and developing impressively. Collaterally, a range of related,

adjacent, and supporting business sectors have flourished, such as sports marketing, event operations, and sports agencies.

Incentivized by [Policy No. 46](#), Chinese companies have been riding the trend that had been seen in the entertainment industry to acquire overseas sports assets or lucrative sponsorship rights, frequently featured in international high-profile deals. According to the incomplete statistics published by [China Economic Weekly](#), Chinese consortia acquired equity in at least fifteen overseas football clubs between 2014 and 2016, including controlling stakes in about nine of these clubs.^[9] Among those on the deal list are Aston Villa F.C., Wolverhampton Wanderers F.C., Inter Milan, RCD Espanyol, and Atlético de Madrid, to name just a few.^[10]

Meanwhile, much like what had occurred in the Chinese entertainment industry, some investment tendencies in this process have been considered irrational by Chinese regulators, which meant that the initial exuberance and excitement was followed by intensified supervision with a series of deterring measures enforced starting at the end of 2016.^[11] Since then, overseas investments on sports assets have plummeted.^[12] Furthermore, to address unfair competition and other irrational market behaviors arising from the newly freed access to mass sports events, [Policy No. 121](#) mentioned the plan to establish an industry credit system and blacklist for discredited event organizations, industry professionals, and participants in sports events.^[13] *The industry credit system is reiterated in the Outline and Policy No. 43.*

2.3.2 Review, Revise, And Annul Outdated Regulations To Speed Up The Revision To *PRC Sports Law*

A legislative plan published by the Standing Committee of the Thirteenth National People's Congress on 7 September 2018, listed the revision plan of the *PRC Sports Law* as “in need of attentive work to be submitted for consideration when appropriate”.^[14] In 2019, the General Administration of Sport reviewed all policies and regulations in relation to sports and annulled those outdated documents, or made necessary revisions.^[15] On 16 December 2019, the General Administration of Sport distributed the *Sports Laws, Rules and Regulations in Force (as of 30 November 2019)*^[16], consisting of one statute (ie, the *PRC Sports Law* promulgated in 1995), seven administrative regulations, 34 documents issued by the Central Government and the State Council, 32 departmental rules, 178 normative documents, and 269 local decrees. The composition of the sports-related regulations reveals the deep marks of government planning in almost every aspect of the sports industry in China. Understanding sports in China must, therefore, always start with comprehending its “top-down” operational characteristics.

Under the guidance of the State Council to “remove administrative hurdles and energize the market”, the General Administration of Sport of China abolished thirteen normative documents at the end of 2019, including three that regulate commercial rights concerning Chinese athletes. The annulled documents^[17] had put heavy restrictions on athletes of the national team as to their commercial rights and activities as well as prize money distribution.^[18] This new development is bound to activate commercialization of athletes involving their image, name, voice, signature, likeness, and other personal rights, consistent with the appeal to “realize the market potential of top athletes” in [Policy No. 43](#). Also, the loosening restriction coincides with the revision to Rule 40 of the *Olympic Charter*, which permits National Olympic Committees (“NOC”) greater flexibility in regulating the use of athlete personal rights shortly before and during the Olympic Games, just in time for the Tokyo Olympic Games marketing campaigns underway. We should expect to see increasing commercial engagements by Chinese athletes on their road to the Tokyo Olympic Games (though at press time those Games are postponed to 2021 because of the COVID-19 pandemic), and with the diversification of their market activities, all stakeholders must prepare themselves for the new challenges that emerge, such as

balancing the commercial interests of individual athletes and those of their respective national governing bodies, as well as the interests of other official Olympic partners, including those of the Chinese Olympic Committee.

2.3.3 Reform The National Sports Associations To Ensure Detachment From The State Administrative Organs

The close links between China's national sports associations and state agencies have long restricted the functions that such organizations may undertake. The "blurring boundaries between these associations and their affiliated state agencies"[\[19\]](#) are to blame for China's underdeveloped sports market lagging behind the world's major sports economies. In the developed sphere, no country has such an overriding and overbearing government presence in its sports associations' work. In light of this situation, the *State Council Sport Policies* repeatedly emphasize the necessity to detach the national sports associations from their state affiliations, and this has also been identified as the major task in the reform of the sports industry.

In 2015, according to the arrangement of the Overall Plan for Chinese Football Reform and Development,[\[20\]](#) the CFA took the lead and detached itself from the General Administration of Sport of China, thereafter operating independently in accordance with the law and enjoying autonomy over affairs within its authority.[\[21\]](#) All other national sports associations are expected to follow the suit, according to the *General Plan for Detaching Industry Associations and Chambers of Commerce from State Agencies*, which was distributed by the General Office of the CPC Central Committee and the General Office of the State Council in July 2015. In April 2017, the Chinese Basketball Association ("CBA") began to operate independently as the Basketball Sports Management Centre officially handed over its operational responsibilities to the CBA.[\[22\]](#)

Reforms of China's national sports associations are scheduled to be accomplished by the end of 2020, according to the plans laid out by the *Implementation Opinions on Comprehensively Promoting the Reform of Decoupling Industry Associations and Chambers of Commerce from Administrative Agencies* (Fa Gai Ti Gai [2019] No. 1063, hereinafter referred to as the "Implementation Opinions") jointly issued by the National Development and Reform Commission, Ministry of Civil Affairs, and Organization Department of the CPC Central Commission on 14 June 2019. This policy paper clarifies the crucial task of separation of institutions and functions, and addresses the necessity for the sports associations to be equipped with their own financial management and human resources independent of their affiliations. The annex of the same document identifies that 21 of the 89 associations affiliated to the General Administration of Sport of China have become independent, and 68 are expected to become independent (as of June 2019).

After becoming independent, the sports associations shall register with the civil affairs authority as incorporated social organizations enjoying full legal personality. How should these newly independent social organizations manage themselves internally? Should their internal arrangement include dispute resolution function? If yes, how should such internal dispute resolution mechanism connect with the people's court, if at all? Should arbitration be used to resolve their sports disputes as it is used internationally, even in domestic cases in foreign jurisdictions, to ensure expertise and harmonious results? Furthermore, how should they streamline internal regulations to comply with the rules of their governing international sports federations? These are all practical issues that deserve the attention of administrators, practitioners, and academia. (See Section 4.1 for further discussion.)

2.3.4 Promote Professional Sports

The Chinese sports industry is unlikely to mature without professional sports being successful. In China, as professional sports are still in their infancy,^[23] the *State Council Sport Policies* rightly highlight the crucial importance of professionalizing sports and the personnel (such as administrators, athletes, and coaches) involved. Football and basketball are designated as the forward pioneers during this reform process.

On 16 October 2019, the CFA set a rough timetable for establishing an independent Chinese Super League (“CSL”), with an announcement that CFA would withdraw from the operation of CSL in its entirety to allow the full autonomy of CSL. Reference was made to the European leagues, and CFA is anticipated to only perform a supervisory function.^[24] The plan is widely viewed as an essential step towards the professionalization and commercialization of Chinese football.^[25] In line with CSL’s interest, it is the expectation of CFA for CSL to maximize its commercial potential as a professional league.^[26] The fully autonomous CSL is in its formation plans to establish its own internal dispute resolution panel and would open its doors for qualified talent to apply and participate if selected.^[27]

On basketball, it is worth noting that CBA has fully withdrawn from CBA (Beijing) Sports Co., Ltd. (hereinafter referred to as “CBA Company”), which is the operating entity of CBA professional league (hereinafter referred to as “CBA League”). The CBA Company is completely owned by the twenty club members of the CBA League (each having 5% of the shares). The year 2019 represents the inaugural year of the “CBA 2.0 Brand Upgrading Plan” in terms of event operations, fan experience, business development, and brand promotion. The 2019-2020 season witnessed the debut of professional referees and a series of innovations, such as enhanced visual effects in the venues, salary caps for domestic players, and partially guaranteed contracts for foreign players.^[28]

When dealing with the dispute over which team player Zhou Qi should be registered with upon his return from the National Basketball Association in the United States to the CBA League, the CBA Company made its decision based on the *Model Contract* for players introduced in the 2018-2019 season and acknowledged the need for further clarification of the *Model Contract* terms, showing its determination to build a strong CBA League contract system.^[29] The CBA League also contains a dispute resolution panel. According to the *CBA League Disciplinary Code*, decisions taken by the CBA Company may be appealed to the panel. In Zhou Qi’s case, no parties appealed. In order to address similar issues, the CBA Company subsequently amended its standard *Employment Contract for Domestic Professional Players (Trial Edition)* on 31 May 2019, with a clause inserted that regulates the registration of domestic players participating in overseas leagues (also known as the “Zhou Qi Clause”).^[30] Clarification of this issue is a welcome initiative to encourage Chinese players to actively train themselves in high-level leagues overseas.

2.3.5 Acknowledge The Commercial Value Of Intangible Sports Assets And Promote Commercialization

Policy No. 46 confirms the names and logos of sports organizations, sports venues, and events as intangible assets capable of commercialization through naming rights, sponsorship, franchising, etc. *Policy No. 43* in 2019 further proposes evaluation criteria in place for intangible sports assets, which seems to provide certain policy-level backing for the argument that intangible sports assets shall be treated as properties. This is of some significance as the prevailing judicial opinion in China (by January 2020) has not acknowledged the property nature of intangible sports assets, such as “broadcasting rights” of sporting events.

The uncertainty in terms of the nature and ownership of broadcasting rights casts doubts on judicial protection available to the exclusive live streaming rights of sporting events. By far, the leading cases in this regard tended to invoke [Anti-Unfair Competition Law](#) for punishing unauthorized live streaming of sporting events, as PRC Courts often refused to acknowledge live streamed games as “work” protected by the [Copyrights Law](#).^[31]

As [Policy No. 121](#) specifies that sporting events hosts or organizing committees should be entitled to revenues from broadcasting the events, it corresponds with the position of [Policy No. 43](#) that intangible sports assets such as exclusive live streaming rights of sporting events shall be protected as property rights. In light of ambiguous judicial opinion, [Policy No. 121](#) and [Policy No. 43](#) afford meaningful policy support for protection of intangible sports assets.

2.4 Nationwide Implementation Of The State Council Sport Policies And Effects

The [State Council Sport Policies](#) are implemented in provinces and cities on a national scale. Since the stipulation of [Policy No. 46](#), provinces and major cities in China have formulated implementation plans considering their respective circumstances. For example, Shanghai envisioned itself in 2018 to become a “world-famous sports city, world-class capital of international sporting events, focal point of key sports resources, and sports technology innovation lab full of energy”.^[32] Shanghai soon put words to actions — in the same year, the metropolis released its [Opinions on Accelerating the Innovation and Development of the Sports Industry in Shanghai](#) (Hu Fu Fa [2018] No. 31; also famously known as “30 Measures on the Sports Industry in Shanghai”), which elaborated on specific implementation measures.^[33]

Chengdu, the capital of Sichuan Province, also stood out. Positioning itself as a “city well-known for hosting international sporting events,” its sport policies are impressively events oriented.^[34] The city announced its plan to host 67 international sports events from 2018 to 2020^[35] and set specific goals and measures for cultivating Chengdu-branded events (including efforts to upgrade international events),^[36] landing major international sports events in Chengdu,^[37] improving event operations and management capabilities, and ensuring event funds.^[38] Under the guidance of these local policies, an abundance of international sporting events found a home in Chengdu. In 2019, the city hosted the World Police and Fire Games, to be followed in succession by the Summer Universiade (in 2021), World Team Table Tennis Championships (in 2022), part of the AFC Asian Cup (in 2023), and the World Games (in 2025). The effects of Chengdu’s strategy have already started to emerge — Chengdu’s reputation as a world-class metropolis is rising, leaping from the rank of 89 in 2018 to 28 (among a total of 641 cities) according to the [Global Sports Impact Report 2019](#) released by Sportcal, a sports market intelligence service provider.^[39]

It remains to be seen what the impact of COVID-19 will be on these grand plans for sports event dominance by Chinese cities. The outbreak of COVID-19 has already held off major sporting events in the first half of 2020. As the new schedule for Tokyo Olympics has been confirmed to hold the opening ceremony on 23 July 2021,^[40] and Euro 2020 being postponed for one year,^[41] the impact caused by COVID-19 on sports turns out unprecedented, which would obviously run through 2020 and continue into 2021 and the years to come. But after that, if Chinese cities like Shanghai and Chengdu remain committed to their stated paths, undoubtedly, they will stand as international sports industry leaders.

PART 3. Case Studies

Case 1

WADA Vs Sun Yang & FINA Before The Court Of Arbitration For Sport (CAS 2019/A/6148)

Facts

On 4 September 2018, International Doping Tests and Management (“IDTM”), a doping control agency entrusted by FINA, sent its personnel to carry out an out-of-competition testing on Chinese swimmer Sun Yang (also the “Athlete”) on behalf of FINA. The three-person sample collection team consisted of one Doping Control Officer (“DCO”), one Blood Collection Assistant (“BCA”), and one Doping Control Assistant (“DCA”). DCO carried her IDTM-issued ID card with a generic letter of authority from FINA to IDTM, and she had personally trained BCA and DCA on record within the IDTM system.^[42] BCA carried her Certificate of Professional Skills in Nursing.^[43] DCA had his own national ID card with him.^[44]

After the sample collection team notified Sun Yang of their authorization, BCA collected blood samples from Sun Yang and placed it in secured containers inside a “cooler” (an insulated box designed to keep samples cool). Sun Yang claimed that DCA took pictures of him, so he refused to have DCA accompanying him for the urine sample collection. Questions concerning the authorization document and qualifications of the sample collection team were also raised by Sun Yang’s entourage, and they insisted that the sample collection could not proceed. The parties argued about what they perceived to be right or wrong, and during the stand-off, Sun Yang’s security guard damaged the secured blood sample containers. As a result of Sun Yang’s actions and the actions taken on his behalf, the sample collection team failed to collect Sun Yang’s urine sample that night and failed to take away Sun Yang’s blood samples.

On 3 January 2019, the FINA Doping Panel decided that “Sun Yang has not committed an anti-doping rule violation”.^[45] This conclusion by the FINA Doping Panel is based on the finding that two of the three sample collection team members assigned by IDTM (BCA and DCA) lacked the necessary authorization, which is mandated by the WADA-promulgated *International Standard for Testing and Investigation* (hereinafter referred to as “ISTI”), to collect a sample. The FINA Doping Panel, therefore, concluded that the sample collection session initiated by IDTM on behalf of FINA was not properly commenced, and was thus invalid and void.^[46]

On 14 February 2019, WADA, as is its right under the applicable rules, appealed the decision of the FINA Doping Panel (hereinafter referred to as the “FINA Decision”) to CAS; the first respondent was Sun Yang and the second respondent was FINA (CAS 2019/A/6148). On 20 August 2019, at the request of Sun Yang and with the agreement of all parties, CAS announced that the case would be heard in public,^[47] making it the second public hearing in the CAS history. On 14 October 2019, CAS confirmed that the public hearing would be held in Montreux, Switzerland, on 15 November 2019.^[48]

WADA accused Sun Yang of “Tampering” under Art 2.5 of the *FINA Doping Control Rules* (edition 2017, hereinafter referred to as the “FINA DC”), and/or “Evading, Refusing or Failing to Submit to Sample Collection” under Art 2.3 of the *FINA DC*. Article 2.5 of the *FINA DC* defines “Tampering or Attempted Tampering with any part of Doping Control” as follows:

“Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness.”

If WADA’s appeal was upheld, this would be Sun Yang’s second doping violation (the first was in 2014, sanctioned by a three-month ban), which means that the sanction could be doubled under Art 10.7.1(c) of the *FINA DC*. Subject to the CAS panel’s assessment of Sun Yang’s fault, WADA requested a ban between two and eight years.

Issues in dispute

There is no adverse blood or urine testing result against the athlete in this case, as given the sample chain of custody having been broken, it was not possible for those tests to be completed later. In this case, the issue concerns whether Sun Yang’s actions were justified on the grounds that IDTM personnel were not properly authorized.

1. Facts: What documents did the IDTM personnel show to Sun Yang concerning their authorization?
2. Rules: What are the applicable rules prescribed by the FINA DC and ISTI as to the authorization of sample collection personnel?
3. Application of rules to facts: Were the appropriate authorization documents shown to Sun Yang by the IDTM personnel in compliance with the FINA DC and ISTI rules?

If the CAS tribunal’s answer to question (3) is negative, it means that the CAS tribunal agrees to the conclusion made by the FINA Decision (but not necessarily on the consequence).^[49] If the CAS tribunal finds that the IDTM personnel had complied with the applicable rules, in particular ISTI, the FINA Decision will be overturned.

CAS Award Summary

On 28 February 2020, the CAS Secretary General issued a Media Release, announcing that WADA’s appeal was upheld and Sun Yang was sanctioned with an eight-year ban starting on the same day. A few days later, the award Ref. CAS 2019/A/6148 (the “Award”), with reasons, was published in full.

The CAS Panel unanimously determined, to its comfortable satisfaction, that the IDTM personnel had complied with all mandatory requirements set out in ISTI,^[50] and Sun Yang had no compelling justification to destroy his blood sample containers when, in his opinion or under advice by his entourage, the collection protocol had not been followed.^[51]

The CAS Panel held that all necessary elements of a tampering violation (including intent) under Art 2.5 of the *FINA DC* had been established.^[52] Pursuant to Art 10.3.1 of the *FINA DC*, the CAS Panel found no discretion with regard to the four-year ineligibility that followed a tampering violation, unless the Panel found grounds to reduce the period of ineligibility under Art 10.5 (no significant fault or negligence) or Art 10.6 of the *FINA DC* (reasons other than fault).^[53]

The CAS Panel found Art 10.6 of the *FINA DC* inapplicable as Sun Yang did not admit to his anti-doping rule violation, nor did he engage in other circumstances which would have allowed the Panel to reduce his sanction.^[54] In addition, the Panel opined that Art 10.5 would not assist in reducing the sanction following a tampering violation, given intent as tampering’s inherent

element had already been met.^[55] Considering the Athlete received a three-month ban in 2015, the CAS proceeding established his second anti-doping rule violation and the Panel found itself bound to apply Art 10.7.1 of the *FINA DC* with “no flexibility or exceptions.”^[56]

As a result, the four-year period of ineligibility resulting from a tampering violation was doubled, making Sun Yang subject to an eight-year ban. The Panel noted the sanction did seem harsh, but it had to “apply the rules as they have been written”.^[57] Moreover, in the view of the Panel, Sun Yang regrettably fell into both categories of intentional and repeat offenders, so the public interest in maintaining a level playing field among competitors would outweigh Sun Yang’s individual personality rights.^[58] Considering that, *inter alia*, there is no evidence suggesting that Sun Yang might have engaged in doping activity between 4 September 2018 and the date of the award, the Panel exercised its discretion as afforded under the applicable rules,^[59] and concluded that fairness required the competition results Sun Yang achieved in the period prior to the CAS award should not be disqualified.^[60]

Our observations

(1) The Reasoning of the Award

The CAS Panel started its reasoning by noting the Athlete had, in principle, committed a tampering violation as he obstructed the sample collection process.^[61] The Panel found little doubt in this conclusion with reference to Art 2.5 of the *FINA DC* and the definition of “Tampering” in Appendix 1 to the *FINA DC*.^[62] However, the Panel noted that there might be the “most exceptional circumstance” where serious flaws (emphasis original) in the notification or doping control process may invalidate the sample collection as a whole, so that conduct such as Sun Yang’s might constitute “compelling justification”.^[63] In this regard, the CAS Panel followed the consistent CAS jurisprudence as established in CAS 2005/A/925 (the *Azevedo* Case), that:

“the logic of anti-doping tests and of the DC Rules demands and expects that, where physically, hygienically and morally possible, the sample be provided despite objections by the athlete. If that does not occur, athletes would systematically refuse to provide samples for whatever reasons, leaving no opportunity for testing.”^[64]

The Panel concluded that the Athlete failed to establish that he had a compelling justification to bring the concerned doping control process to a premature end.^[65] To reach this conclusion, the Panel looked into the authorization issues summarized above, and found to its comfortable satisfaction that IDTM’s sample collection personnel complied with all mandatory requirements set out in ISTI.^[66] Other justifications claimed by the Athlete, such as the alleged taking of pictures by DCA, or the alleged suggestion of DCO to destroy the blood samples, were dismissed in their entirety for either being insufficient or implausible.^[67]

Although the Panel did not rule out the “most exceptional (emphasis original)” circumstance where serious flaws in the notification process or during any part of the doping control process might invalidate the sample collection process as a whole,^[68] the Panel stressed the serious consequences that could follow athletes’ refusal to cooperate with the sample collection session.^[69] Therefore, “as a general matter, athletes should not take matters into their own hands... The proper path for an Athlete is to proceed with a Doping Control under objection, and making available immediately the complete grounds for such objection”.^[70]

(2) Comments on Handling of the CAS Procedure

The conduct of Sun Yang on the night in question might have nailed himself on a tampering violation, but it is probably fair to say that the handling of the CAS proceedings contributed to the unusual eight-year ban. Apart from the multiple, unsubstantiated challenges against the WADA-appointed arbitrators and the WADA lead counsel that gave rise to three appeals to the Swiss Federal Tribunal, all dismissed, it must be the Athlete's striking lack of remorse at the hearing^[71] and the team's blame shifting strategy^[72] that ultimately crushed the Panel's limit. The Athlete's "forceful personality"^[73] and disregard of rules,^[74] as observed during the hearing, only confirmed the Panel's perception of the events in question based on the evidence before it, which may have eliminated any room for discretion, if any, for the Panel to impose a more lenient sanction.

The Award suggests that it could be unwise to insist on innocence when the evidence and rules suggest otherwise. In fact, the Panel pointedly noted the "formalistic legal arguments" in Sun Yang's final words,^[75] which might denote lack of sincerity on the Part of Athlete's team. It would serve the Athlete's best interest in such circumstances to exhaust any possible means under the applicable rules, to secure minimum sanction possible, and to protect the Athlete's reputation. In this regard, the efforts of the Athlete's team to paint him as an athlete rights defender who challenged WADA singlehandedly turned out unhelpful — it backfired.

(3) Reflections and Proposals

Sun Yang's successful swimming career came to an abrupt end on 28 February 2020 in an ungraceful manner. But critical analysis of the proceedings and reflections must carry on. The Athlete's ignorance of rules (either during the doping control process or at the public hearing) exposes the urgent need for athlete education, yet not limited to anti-doping education. Equally important is to educate the athletes to observe and respect rules, and to take responsibility for their actions, no matter how successful they are in the sporting field.

The poor judgment shown by Sun Yang's support staff (including an official from the local anti-doping agency), and the fact that Dr. Ba, his team doctor upon whom, in part, he relied for advice on the fateful night in question, had before been found to have committed a doping offense based on failure to adhere to the rules or in his words to have been unaware of them, reveals the necessity to regularly train and test those working closely with athletes, and anti-doping officials, to ensure these personnel are up to date with the relevant international rules as well as how international rules interplay with their domestic counterparts.

Last but not the least, the evasiveness of Sun Yang and his witnesses as seen at the public hearing, as well as their apparent lack of preparation or awareness of the nature of such a proceeding, which gave an unfavorable impression to any observer, should serve as a wake-up call to train China's own, competent, bi-lingual counsel who can lead any future international proceedings and guide their clients sensibly through such an unfamiliar process bearing serious consequences. The ultimate objective is for China to develop its own team of sports law professionals capable of affording competent representation in English or French and Mandarin to Chinese athletes. Forming or designating the domestic sports arbitration institution as advocated in PART 4below might facilitate this development of experienced counsel.

Case 2

Recognition And Enforcement Of A CAS Award By The PRC Court Under The *New York Convention*

Facts

In December 2012, Juan de Dios Crespo Pérez (“Juan”), a Spanish lawyer, and Alfonso Vargas, an Uruguayan lawyer (“Alfonso”, together with Juan, the “Claimants”) entered into a [Legal Service Agreement](#) with Dalian Aerbin Football Club Co., Ltd. (“Aerbin”) to represent Aerbin, as the Respondent, in a dispute resolution proceeding before FIFA brought by a foreign football player who had played for Aerbin. The [Legal Service Agreement](#) was executed in English, with Chinese translation attached, which specifies that in the event of any discrepancy between the English and Chinese contractual versions, the English version shall prevail. The [Legal Service Agreement](#) also provides the amount of attorney’s fees and conditions and term of payment. In particular, the [Legal Service Agreement](#) contained an arbitration clause stating that,

“This Agreement shall be governed and construed in accordance with the laws of Switzerland, and the parties agree to submit the Agreement to the Court of Arbitration for Sport. The place of arbitration shall be Lausanne, Switzerland”.

The Claimants performed services under the [Legal Service Agreement](#), but Aerbin failed to pay attorney’s fees to the Claimants as agreed. In October 2014, the Claimants applied to CAS for arbitration. Upon acceptance of the case (Case No. CAS 2014/O/3791), CAS served Aerbin with the Request for Arbitration and asked it to respond and participate in the arbitration proceedings, including the nomination of arbitrators within the prescribed time limit in accordance with its [Code of Sports-related Arbitration](#). Aerbin never responded. In February 2015, CAS appointed a sole arbitrator, who rendered an award in September 2015 based on written submissions only. The award ruled in favor of the Claimants for attorney’s fees, including interest of 5% per annum (attorney’s fees and interest are collectively referred to as the “Debt”). In addition, the award ordered Aerbin to bear the cost of the CAS arbitration proceedings in the amount of CHF 3,000.

As Aerbin failed to pay the Debt as required by the award, the Claimants filed an application in September 2017 with the Dalian Intermediate People’s Court (hereinafter referred to as “the Dalian Court”) for recognition and enforcement of the CAS award in accordance with the [New York Convention](#) and the [Civil Procedure Law of the People’s Republic of China](#). As Aerbin was renamed Dalian Yifang Football Club Co., Ltd. (“Yifang” or “Respondent”) in November 2015, the proceedings before the Dalian Court listed Yifang as the Respondent.

Issues in dispute

The parties agreed that the CAS award could be recognized and enforced in China under the [New York Convention](#). The key issue concerned whether the Dalian Court should refuse the recognition and enforcement of the CAS award under Art 5 of the [New York Convention](#).

Yifang Club defended by arguing the following.

(1) The arbitration clause in the [Legal Service Agreement](#) is invalid. According to Art 5(1)(a) of the [New York Convention](#), the people’s court shall not recognize and enforce the CAS award.

Yifang’s position is that CAS only deals with sports disputes under the [Code of Sports-related Arbitration](#),^[76] whereas the arbitration clause in the [Legal Service Agreement](#) provides for the submission of commercial disputes concerning attorney’s fees to CAS for arbitration, which goes beyond the jurisdiction of CAS, making it fall within the circumstances prescribed in Art 5(1)(a) of the [New York Convention](#), namely that the award may not be recognized, nor enforced due to an invalid arbitration clause. In addition, the Claimants argue that the Chinese translation

of the [Legal Service Agreement](#) does not specify arbitration, and, therefore, the Respondent lacks the intention to submit to arbitration.

(2) As the Respondent was not properly notified, it could not participate in the arbitral proceedings and lost the opportunity to defend itself. The People's Court should refuse the recognition and enforcement of the CAS award in accordance with Art 5(1)(b) of the [New York Convention](#).

Yifang reasons that when the dispute occurred, the club's correspondence address (as specified in its enterprise annual report) was inconsistent with the address used by CAS for the purpose of serving notice, so the Respondent was not properly notified and informed, and was thus deprived of the opportunity to defend itself.

[Dalian Court Judgment](#)

(1) Defense of "Invalid Arbitration Clause"

The Dalian Court determined Swiss law as the law applicable for the validity of the arbitration clause in accordance with the [Law of the Application of Law to Foreign-related Civil Relations](#) and the [Legal Service Agreement](#). Accordingly, it was held that the Respondent failed to prove that the arbitration clause was invalid under Swiss law. As to the claim that the Chinese translation of the [Legal Service Agreement](#) did not reflect the intent of arbitration, the Dalian Court opined that the Chinese translation was only for reference purposes, and any difference from the original English version would not invalidate the arbitration clause under Swiss law.

Furthermore, the Dalian Court distinguished the "lack of jurisdiction of the arbitration institute" from the "invalidity of the arbitration clause" and held that the lack of CAS jurisdiction as claimed by Yifang was not tantamount to an invalid arbitration clause. When considering whether to recognize foreign arbitral awards, courts are not required to assess the jurisdiction of an arbitral institution under the [New York Convention](#) and relevant PRC laws and judicial interpretations.^[77] "Defects in the jurisdiction of arbitral institutions shall not constitute grounds under which recognition and enforcement may be refused under the [New York Convention](#)", the Dalian Court reasoned.^[78] Even if the court proceeded to assess whether the dispute was sports related, the Dalian Court would reply in affirmative, because this case concerned attorney's fees arising from sports-related matters.

(2) Defense of "Improper Notice"

The Dalian Court found out that the address used by CAS to notify Aerbin was Aerbin's domicile address registered with the administrative authority for industry and commerce, which was the same as the Respondent's contact address set forth in the [Legal Service Agreement](#). By submitting records of delivery by DHL and signed receipts for the relevant arbitration documents, the Claimants proved that all the arbitration documents delivered by CAS were received by Aerbin. Aerbin's failure to respond to the arbitration documents was, therefore, deemed a voluntary waiver of defense, not as the result of procedural defects.

On 1 August 2018, the Dalian Court rendered Civil Ruling Ref. (2017) Liao 02 Min Chu No. 583 to recognize and enforce the arbitral award Ref. CAS 2014/O/3791. The same Civil Ruling also ordered the Respondent to pay the case application fee in the amount of RMB 500.

(3) Enforcement Procedures

After the above-mentioned ruling took effect and while the enforcement proceeding was ongoing, Yifang raised a written objection requesting the Dalian Court to revoke the enforcement proceeding. Yifang submitted the meeting minutes of the municipal government and the undertaking made by the original shareholders of Aerbin, in order to prove that the past and current shareholders of Yifang had come to an agreement. According to that agreement, all debts prior to the transfer of Aerbin's equity to the Yifang Group would be borne and discharged by the Aerbin shareholders. Yifang argued that the CAS ruling was made before the transfer of Aerbin's equity to the Yifang Group. Therefore, in the view of Yifang, any debts arising from the CAS award should be enforced against the original Aerbin shareholders rather than Yifang; otherwise, "irreparable economic losses" would be incurred on Yifang.^[79]

On 14 March 2019, the Dalian Court rendered the Ruling Ref. (2019) Liao 02 Zhi Yi No. 122, which held that Yifang's objection was not against the enforcement proceeding but the basis of enforcement (i.e. the CAS award); however, the effectiveness of the CAS award had already been recognized and enforced by the people's court, so the objection must be denied.

On 25 March 2019, the Dalian Court rendered the Ruling Ref. (2018) Liao 02 Zhi No. 900, designating Shahekou District People's Court of Dalian City to carry out the enforcement of arbitral award CAS 2014/O/3791.

Our observations

(1) The Dalian Court Correctly Applied the *New York Convention*.

(a) There is a distinction between passive examination (Art 5(1)) and voluntary examination (Art 5(2)).

The Dalian Court correctly applied the *New York Convention* and *Notice of the Supreme People's Court on Implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Acceded to by China* (hereinafter referred to as the "Notice") in this case. According to the *Notice*, the people's court shall examine the circumstances under Art 5(1) of the *New York Convention* upon the application of the defending party. The burden of proof is on the defending party to establish that such circumstances under Art 5(1) of the *New York Convention* exist. This is different from Art 5(2) under which a court can examine, on its own initiative, whether the arbitral award falls under the circumstances therein (i.e. the matter in dispute cannot be arbitrated under PRC law or is contrary to public policy).

The reasoning by the Dalian Court shows that it correctly implemented the principles of the *New York Convention*. Considering that the Respondent failed to prove the invalidity of the arbitration clause and the alleged improper notice, the Dalian Court denied its defense. Commendably, the Dalian Court did not engage in the exercise on its own initiative to assess whether the arbitration clause was valid under Swiss law or whether there were other reasons for non-recognition or non-enforcement under Art 5(1) of the *New York Convention*.

(b) The court does not second-guess the arbitral tribunal's competence-competence.

In its reasoning, the Dalian Court distinguished the jurisdiction of CAS as an arbitral institution from the validity of arbitration agreement. Under the *New York Convention*, an invalid arbitration agreement might constitute a basis to refuse recognition and enforcement of a foreign arbitral award; in contrast, the jurisdiction of CAS as an arbitral institution is not a relevant matter that courts shall consider for recognition and enforcement purposes. In other words, when examining a foreign arbitral award under the *New York Convention*, the court shall not second-guess the competence-competence as determined by the arbitral tribunal.

In any event, the parties agreed to CAS as the arbitral institution of choice and its rules as the applicable rules. The CAS rules are not narrowly limited to only sports cases, and arguably if the parties agreed to CAS as the arbitration provider and rules of choice for all of their disputes arising out of an agreement, it does not matter much whether CAS has limited its jurisdiction in some general sense.

(c) Agreements between past and current shareholders of Yifang shall not jeopardize third parties.

In terms of enforcement, Civil Ruling Ref. (2019) Liao 02 Zhi Yi No. 122 made by the Dalian Court clarified that the internal agreements reached among a club's shareholders regarding the creditors' rights and debts of the club must not jeopardize third parties. This is in line with basic legal principles. The Dalian Court did not accept Yifang's defense that "if Yifang assumes liabilities (to the Claimants), there would be tremendous economic losses irreparably incurred on Yifang", as such defense did not constitute basis for objection to enforcement in legal sense. The Dalian Court's ruling reflected its adherence to law and its ability to accurately understand and apply international treaties.

(2) The Recognition and Enforcement of CAS Award 2014/O/3791 Does Not Warrant the Conclusion that all CAS Awards Can Be Recognized and Enforced in China.

In the case under discussion, the Respondent did not dispute that the CAS award was subject to enforcement under the [New York Convention](#). Nor did the Respondent invoke the "commercial reservation" made by China when acceding to the [New York Convention](#). As a result, the Dalian Court did not have an opportunity to analyze these issues. According to Art 1 of the [New York Convention](#), as long as "an arbitral award is made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal," the [New York Convention](#) shall be applied to the recognition and enforcement of such awards. Since the parties in the present case are natural persons and legal persons, and the award was made by CAS in Switzerland, the [New York Convention](#) shall apply to the recognition and enforcement of the award (of Swiss nationality) in China.

It is worth noting that China made what is known as the "commercial reservation" when acceding to the [New York Convention](#), which means that foreign arbitral awards capable of being recognized and enforced by the people's court shall be limited to those dealing with commercial legal relationships. Under Art 2 of the [Notice](#), "commercial legal relationship" is defined as the economic rights and obligations arising from contracts, torts, or relevant legal provisions. In the case of [Aerbin/Yifang](#), the subject matter to the CAS award concerns pecuniary obligation of commercial nature, which falls within the "commercial reservation". The more challenging issue is — should the CAS award concern non-economic rights and obligations such as eligibility to compete and other disciplinary matters, would the "commercial reservation" permit or exclude such an award being recognized and enforced? This issue is currently under debate in Chinese academia.[\[80\]](#)

From a practical perspective, it is almost impossible for national courts to enforce CAS awards dealing with non-commercial or non-economic legal relationships, such as eligibility to compete or disciplinary sanctions (e.g. bans from competing and transfer bans).[\[81\]](#) On the one hand, a party to such disputes is usually a sports regulatory authority such as the International Olympic Committee ("IOC"), WADA, or an international sports federation, and national courts could hardly exercise jurisdiction and enforcement measures over these international organizations; on the other hand, non-commercial measures in sports can only be effectively implemented through the sports pyramid governance mechanism (e.g. international sports federations govern their member associations, and the member associations govern their registered athletes).[\[82\]](#)

Since the case of Yifang did not address whether a non-commercial or non-economic legal relationship falls within the commercial reservation, it would be overstating its precedential status as the first case to recognize and enforce CAS awards in China. Any precedential value of this case would be limited to CAS awards dealing with commercial or economical legal relationships.

What if a CAS award deals with matters of disciplinary nature of which certain sanctions are economic, such as fines? Could a competent court recognize and enforce the fines? Although a pecuniary obligation arises from the fines and it is possible for a national court to enforce such pecuniary obligation, given that the matter under arbitration is disciplinary in nature, there may be a case to be made based on the “commercial reservation” to reject the application of the [New York Convention](#).^[83] The pertinent reasoning is that even if a national court is capable of enforcing the pecuniary obligation as part of disciplinary sanctions, the pecuniary obligation is still disciplinary in nature; if the [New York Convention](#) shall not apply to the enforcement of disciplinary sanctions in a jurisdiction where the commercial reservation is made, the enforcement of a pecuniary payment obligation as result of such disciplinary sanctions shall, in principle, be rejected in such jurisdiction.

(3) Enforcement of Decisions of the FIFA Players’ Status Committee (“PSC”) and Dispute Resolution Chamber (“DRC”) in China

In practice, cases emerge concerning enforcement of financial decisions of the FIFA Players’ Status Committee (hereinafter referred to as “PSC”) and Dispute Resolution Chamber (hereinafter referred to as “DRC”) in China. The financial decisions of PSC and DRC are generally enforced through the football governance pyramid, and the measures of enforcement range from deduction of points to transfer ban and the worst of all, being expelled from the FIFA family. However, once a Chinese football club subject to enforcement falls outside the football governance system, e.g. no longer being registered with CFA, claimants against such club are essentially deprived of means to enforce the financial decisions of PSC or DRC except resorting to the people’s courts. Under such circumstances, claimants may need to file a new lawsuit against the defaulting club using the PSC or DRC decisions as evidence.

The people’s courts, especially those courts with first-instance jurisdiction over most of such cases, are not familiar at all with the football governance mechanism and are usually not knowledgeable about the nature of the decisions rendered by PSC or DRC. When a claimant brings a lawsuit to the court because the respondent club would not comply with the PSC or DRC decisions, the initial reaction from the court is often to refuse exercising jurisdiction based on *non bis in idem*, or contractual terms providing for “arbitration by the CFA arbitral commission” or “arbitration by CAS”. Even if the court eventually decides to exercise jurisdiction as it accepts that the PSC or DRC decisions could not exclude judicial remedy at the enforcement level, the judges often find it difficult to properly categorize these documents — they would take time to contemplate whether the PSC or DRC decisions shall be recognized and enforced under the [New York Convention](#), or simply used as evidence to support the claimant’s new lawsuit.

A case involving enforcement of the PSC or DRC decisions must, therefore, overcome various hurdles before being heard substantively before the people’s courts. The claimant must first persuade the court that “arbitration by the CFA arbitral commission” is not “arbitration” under the [Arbitration Law](#) and the [New York Convention](#), which excludes jurisdiction of the people’s courts. Unhelpfully, neither the [Arbitration Law](#) nor the [New York Convention](#) defines what constitutes “arbitration”. Second, judges need to be convinced that the PSC or DRC decisions are not arbitral awards under the [New York Convention](#) to be enforced in accordance with the [Notice](#).^[84] Although it is challenging to persuade the court to just exercise its jurisdiction in these cases, the interaction between counsel and the court over these issues is also a

meaningful process to raise awareness about football governance. In fact, questions posed by the judges are valuable, given the unique complication of football-related disputes ([see](#) Case 3 for details). If effective solutions are to be offered in light of increasing football disputes, it would be necessary to streamline the communication and coordination between the people's courts and CFA, to make sure that disputes falling outside the football governance scheme may proceed to the courts as last resort.

Case 3

Case Series Of *Chinese Players Vs. Dalian Transcendence Football Club*[\[85\]](#)

Facts

At the end of 2018, the Dalian Transcendence Football Club (hereinafter referred to as “Dalian Transcendence”) was on the verge of dissolution and unable to pay the salaries it owed to several players. The players applied to the CFA Arbitration Commission for dispute resolution in accordance with the [Player's Work Contract of Dalian Transcendence Football Club](#) (hereinafter referred to as “Work Contract”). Article 12 of the [Work Contract](#) provides that “any dispute arising from the performance of this contract shall be resolved by the parties through consultation; the parties may apply to the CFA Arbitration Commission for arbitration if such consultation fails; if Party B (the Plaintiff) is of Chinese nationality, the award of the Arbitration Commission shall be final.”

On 28 February 2019, Dalian Transcendence was finally disqualified by CFA due to its long-term wage arrears. The CFA Arbitration Commission refused to register the cases filed by the players on the ground that Dalian Transcendence no longer fell within the governance of CFA pursuant to the [Working Rules of the CFA Arbitration Commission](#).

Some of the players made attempts to register their cases before the Shahekou District Labor and Personnel Dispute Arbitration Commission (hereinafter referred to as “Labor Dispute Commission”) in Dalian City. However, the Labor Dispute Commission also rejected the cases for not being labor disputes.

The players then filed lawsuits with the People's Court of Shahekou District, Dalian City (hereinafter referred to as the “Shahekou Court”), where Dalian Transcendence was domiciled. The Shahekou Court held that the cases concerned disputes between a football club and football players over the [Work Contract](#), and both parties had agreed to submit to CFA jurisdiction in the [Work Contract](#). Thus, the cases fell within the jurisdiction of CFA Arbitration Commission that excluded Shahekou Court from exercising its jurisdiction. Based on the foregoing, the Shahekou Court dismissed the cases. Cui Kai, Wang Yi, Quan Heng, and other players appealed to the Dalian Intermediate People's Court (hereinafter referred to as the “Dalian Court”) for setting aside the ruling of first instance and applied for the designation of the Shahekou Court to hear the merits of their cases.

Issues in dispute

When football players enter professional contracts with football clubs and agree that disputes shall be submitted to the CFA Arbitration Commission, does this exclude the jurisdiction of the people's court?

Judgment

In the appeal proceedings, the Dalian Court shared the same position with the Shahekou Court that the court should not intervene in these cases. The appeals filed by the players were thus dismissed with one exception (see “Our observations” section below).^[86] To reach its conclusion, the Dalian Court relied on the fact that the *Work Contract* provides for arbitration by the CFA Arbitration Commission; moreover, Art 32 of the *PRC Sports Law* stipulates that disputes in competitive sports activities shall be mediated and arbitrated by sports arbitration institutions. In addition, Art 5 of the *Working Rules of the CFA Arbitration Commission* (Zu Qiu Zi [2009] No. 308) provides that the Commission shall deal with matters relating to work contracts between football clubs and players. The Dalian Court opined that the dispute resolution clause in the *Work Contract* is in compliance with the *PRC Sports Law* as well as the rules applicable to the football industry. The dispute resolution clause was, therefore, held “lawful and valid”. The Dalian Court reinforced its conclusion by noting that arbitration by CFA must be more expedient than litigation. “Considering the short career of professional football players and the specificity of professional football, it is inappropriate for the court to exercise jurisdiction over disputes arising from work contracts between professional players and football clubs”, the Dalian Court held.^[87]

Our observations

(1) The Jurisdictional Vacuum over Claims against Clubs Falling Outside of Football Governance

The Dalian Court's ruling in this case left the players of Dalian Transcendence (and other clubs no longer registered with CFA) in an awkward situation where the courts, the CFA Arbitration Commission, and the Labor Dispute Commission passed the buck. The case of a player named Li Gen against his former club Shenyang Dongjin Football Club (hereinafter referred to as “Shenyang Dongjin”) is representative of such jurisdictional quandary.

In August 2013, Li Gen brought his claim against Shenyang Dongjin for salaries overdue before the CFA Arbitration Commission, which returned its decision not to accept the case. Li Gen then applied to the Labor Dispute Commission of Shenyang. Rejected again, Li Gen had no choice but to initiate litigation proceedings. After the first and second instances (with the Shenyang Intermediate People's Court ruling that the Tiexi Court should hear the merits of Li Gen's case),^[88] the Tiexi Court rendered a judgment ordering Shenyang Dongjin to pay Li Gen,^[89] which prompted Shenyang Dongjin to launch an unsuccessful appeal.^[90] and later initiated an application to the High People's Court of Liaoning Province for retrial.^[91] A retrial subsequently held by the Shenyang Intermediate Court decided that Li Gen's claim must be dismissed.^[92] Approximately five years had elapsed since Li Gen started his initiatives to vindicate his rights, only to find his years of efforts standing still. Li Gen's claim was rejected for exactly the same reason as in the cases against Dalian Transcendence.

It is worth noting that in the series of cases against Dalian Transcendence, only one player named Quan Heng won his appeal. The Dalian Court held that it was improper for the court of first instance to dismiss Quan Heng's claim; the Shahekou Court was designated to hear the merits of *Quan Heng* case. The result of *Quan Heng* case is inconsistent with those of other players, including the case of *Ötkür Hesén*, which was later decided by the same court (i.e., the Dalian Court) to decline jurisdiction. Why was *Quan Heng* case decided differently than other cases while the fact patterns were identical? The only notable particularity of *Quan Heng* case,

as shown in the courts' rulings, is that Quan Heng was able to produce a written rejection letter by the CFA Arbitration Commission, which specified that CFA lacked governance power over clubs no longer registered.^[93] It would be an injustice if other cases lost their judicial remedy only because of the failure to provide a CFA rejection letter in writing, as such document is of formality nature and could be supplemented.

(2) “Arbitration” by the “CFA Arbitration Commission” is Not Arbitration under the New York Convention and the PRC Arbitration Law.

Cases of *Dalian Transcendence and Li Gen* demonstrate how difficult it is for professional players (and coaches) to recover salaries overdue from their clubs. The jurisdictional vacuum in these cases results from the term “arbitration” often contained in template work contract in Chinese football industry. The courts in the cases of *Dalian Transcendence and Li Gen* clearly regarded “arbitration” by the CFA Arbitration Commission the same as governed by the *PRC Arbitration Law* and the *Civil Procedure Law*. The courts refrained from exercising jurisdiction on these cases based on Art 124 (2) of the *Civil Procedure Law* (which provides that arbitration clause shall exclude jurisdiction of the People's Court); the CFA stepped aside on the ground that football governance no longer applied to a deregistered clubs. It was also the usual practice of the Labor Dispute Commission to turn away these cases for not being “labor and personnel disputes”. The foregoing paragraphs explained how the players (or coaches) concerned were stuck in the jurisdictional vacuum.

The adopted name of the CFA's internal dispute resolution agency caused confusion. It must be clarified that the “CFA Arbitration Commission” is not an arbitral institution under the *PRC Arbitration Law*. Pursuant to Art 10 of the *Arbitration Law*, an arbitral institution shall be registered with the judicial administrative department of the relevant province, autonomous region, or municipality. Art 11 further provides that an arbitral institution shall have its own name, domicile, articles of association, and property. Given that the CFA Arbitration Commission is an internal agency of the CFA, it does not meet the requirement under the *Arbitration Law* and thus could not be categorized as an arbitral institution performing arbitration proceedings. Presumably, this means that the CFA could not render an arbitral award enforceable under the *Arbitration Law* and the *PRC Civil Procedure Law*.

The CFA Arbitration Commission is not a “sports arbitration institution” envisaged by Art 32 of the *PRC Sports Law* as well, because the State Council has not promulgated relevant regulations to establish such an institution. It is a mistake when the Dalian Court invoked Art 32 of the *PRC Sports Law* in the cases against Dalian Transcendence to justify its decision to decline jurisdiction.

To avoid the jurisdictional vacuum as seen in the cases of *Dalian Transcendence and Li Gen*, this report makes the following proposals:

- First, raise awareness to assist the people's court in understanding football governance. Regular sessions around the country with experienced practitioners and knowledgeable academics sharing information with judges and law clerks might be a useful first step.
- Second, to remove the confusion caused by the word “arbitration” associated with the CFA Arbitration Commission and its activities, it is proposed to substitute “dispute resolution” or “disputes panel” for “arbitration” currently used in football contract templates. Also, “award” as used in these templates should be replaced by “decision”. In fact, FIFA's internal bodies that perform similar functions (after which CFA internal bodies are structured) never refer to arbitration; documents rendered by these FIFA bodies are called “decisions” rather than “awards.”^[94] Accurate naming would help

differentiate internal dispute resolution mechanism from arbitration, and hopefully remove obstacles for professional players and coaches to seek judicial remedies.

Another area of confusion emanates from the template provision that “when Party B (plaintiff) is of Chinese nationality, the award of the CFA Arbitration Commission shall be final”. The reference to finality would mislead the court not to intervene. However, the said finality only takes effect within the football governance system and applies to clubs still affiliated with the FIFA system through being registered with CFA. Once the respondent club falls outside the FIFA system for not being registered with CFA (such as Dalian Transcendence), the finality is rendered moot for that club; in other words, the court can and should intervene when the football governance mechanism loses its effect. It is, therefore, recommended to remove the reference to finality in the professional contract template clause.

PART 4. PRACTICAL AND ACADEMIC FOCUS

4.1 “Sports Arbitration Institution” Under Art 32 Of The *PRC Sports Law*

As mentioned above, the “sports arbitration institution” envisaged by Art 32 of the *PRC Sports Law* has never been established. Given that most Chinese sports associations are still in the reform process to dissociate themselves from administrative supervision, combined with the relatively low level of professionalism in Chinese sports, the need has yet to emerge in terms of a specialized, internal dispute resolution function. In such context, the well-known internal dispute resolution agency established within CFA may be easily mistaken as the “sports arbitration institution” under Art 32 of the *PRC Sports Law*, causing the jurisdictional vacuum discussed above.^[95]

If the “sports arbitration institution” envisaged by the *PRC Sports Law* can be implemented at the earliest opportunity, it may offer an appropriate forum for players (or coaches) to vindicate their rights against deregistered clubs. Moreover, in football disputes, a sports arbitration institution in a real sense can keep the forum of disputes involving foreign players and coaches within the Chinese jurisdiction, thus reducing procedural costs involved and augmenting the efficiency of enforcement compared with resolving disputes at the international level. Similarly, a robust sports arbitration system in China can keep disputes out of the courts, and before sophisticated panels of industry experts who make decisions specific to the sporting endeavor that will be harmonized across China and have universal application.

Under the current system, foreign-related football disputes may be submitted to the FIFA DRC or PSC for resolution, and non-foreign-related disputes (such as disputes between Chinese players or coaches and Chinese clubs) can be submitted to the internal dispute resolution agency within CFA (rather than FIFA). The right to appeal to CAS is available for both types of disputes.^[96] If a sports arbitration institution has been duly established in China, provided that the CFA recognizes its appeal jurisdiction over football-related disputes, football-related disputes in China would be resolved with finality by such arbitration institution, which shall exclude people’s court and CAS jurisdiction.^[97]

A qualified sports arbitration institution must satisfy the criteria under Art 58(3)(c) of the *FIFA Statutes*, and similar rules in other sports, which require that such an institution shall be “independent” and “legally established”. Reference could be made to *FIFA Circular 1010*, which

further defines the criteria of “independent” and “legally established”, meaning that international minimum standards for a fair hearing must be respected.^[88] To be more specific, an internationally recognized sports arbitration institution must ensure that both parties to the dispute enjoy equal rights regarding legal representation, the right to be heard, and the right to appoint an independent, impartial arbitral tribunal. National institutions that fall short of the above criteria cannot exclude the CAS jurisdiction. Future plans for the sports arbitration institution in China, which may well embrace the potential to perform dispute resolution services in all sports-related disputes, including anti-doping disputes in China, need to take into account the international minimum standards as outlined in *FIFA Circular 1010* and other applicable rules.

The envisaged sports arbitration institution may not come into fruition anytime soon, given the required involvement of the State Council^[89] and even the People’s Congress.^[100] As the starting point, it might be valuable to explore a more feasible alternative, such as creating a sports division inside a credible arbitration institution in China with a list of specialist arbitrators. To make sure such sports division could function, it must convince sports regulators such as the General Administration of Sport of China and national sports associations, notably CFA and CBA, to recognize its jurisdiction. It is also valuable to seek inspiration from across the globe to assess how national sports-related issues are handled before they rise to an international level.

There are two major models in use around the world. One model, used, e.g. in the UK, Canada, and some other jurisdictions in Europe, focuses on a specific sports arbitration panel, created for that purpose, which only takes on sports-related disputes over which it has been given proper jurisdiction. The other model, as adopted in the United States, uses existing commercial institutions to resolve sports-related disputes, even if those disputes are Olympic related.

Demonstrating the first model, in the UK, Sport Resolutions is the body that is recognized by the British Olympic Association to resolve Olympic-related disputes, and Sport Resolutions also handles UK selections and anti-doping-related disputes, as well as some football and safeguarding cases. In Canada, the Sports Disputes Resolution Centre of Canada (“SDRCC”) fulfils a similar function. Both Sport Resolutions and SDRCC are government funded, but independently operated. They appoint a pool of a few dozen specialized arbitrators and mediators to resolve their disputes. Sport Resolutions even has specialized panels, focused separately on anti-doping, safeguarding, and other disputes. There is no national legislation requiring disputes to be heard by these bodies but effectively all sports stakeholders in countries that adopted this first model have recognized the jurisdiction of these designated arbitral bodies.

In the United States, which represents the second model, the Judicial Arbitration and Mediation Services (“JAMS”) handles safe sport/safeguarding disputes for the Olympic family, and the American Arbitration Association (“AAA”) handles anti-doping, eligibility, and discipline cases. These are two of the largest arbitration and mediation institutions in the world that handle primarily commercial cases, but they have been designated by the relevant parties to handle Olympic sports-related disputes. Football in the United States is governed differently and has its own internal process for resolving its disputes that then proceed to FIFA. Both JAMS and AAA designate specialized panels of arbitrators to hear their sports disputes, who have expertise separate from or in addition to those who handle commercial disputes. Neither JAMS nor AAA are funded by the US government; they are private dispute resolution institutions that fund themselves generally from filing fees and other revenue streams related to dispute proceedings. They are both capable of tailoring programs specific to any particular kind of sports dispute situation, as JAMS has shown by implementing its very specialized safe sport/safeguarding disputes program.

Which structure is best suited to accommodate Chinese characteristics? The answer perhaps depends.

The *PRC Sports Law* was passed decades ago, and that legislation seems to pre-suppose the creation of a specialized, focused, separate sports arbitration institution, perhaps closely aligned with the government. A lot has changed since then. The Chinese government is endeavoring to get out of the business of directly running and heavily regulating sport. And there has been a tremendous growth and flourishing of homegrown Chinese dispute resolution institutions. Twenty-five years ago when the *PRC Sports Law* was stipulated, there were mainly China International Economic and Trade Arbitration Commission (CIETAC) and the Chinese Maritime Arbitration Commission dominating the world of dispute resolution in China. As of 2018, there were some 255 arbitral institutions registered in China.^[101] This indicates a robust dispute resolution structure already in place, with homegrown institutions like the Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC) leading the way in foreign-related and other dispute resolution in China.

Given how long it has taken to designate or form a domestic sports arbitration tribunal despite express legislative direction (this still has not been accomplished) and given the increasing need for mediation services in all walks of life, including in sports, it would seem wise for China to consider the second model discussed above, i.e. using an existing arbitration and mediation provider to perform the function of sports-related arbitration and mediation to resolve China's Olympic, football, basketball, and doping disputes.

An institution like BAC/BIAC not only has the experience with managing cases of all varieties, but it also has a trained professional staff, and an abundance of hearing facilities. In addition, it is located in close proximity to the Chinese sports apparatus. BAC/BIAC has shown it is adept at specializing when necessary, and it would not take very much, or very long, for BAC/BIAC to ramp up operations in this area: identify, recruit, check, and announce qualified arbitrators and mediators (domestic and foreign as appropriate), and commence operations. Serious thought should be given to this model, particularly given the government's new emphasis on developing private sector assistance in de-regulating and privatizing the sports sector.

4.2 Sports Dispute Resolution Mechanisms Related To The Beijing Olympic Winter Games

CAS started to create *ad hoc* tribunals for summer and winter Olympics starting with the 1996 Atlanta Olympic Games. The 2022 Olympic Winter Games in Beijing (hereinafter referred to as "Beijing 2022") will be no exception. As in all other Olympic Games (hereinafter referred to as "Games") where CAS established a presence, CAS shall be involved in educating a group of Chinese lawyers for *pro bono* legal assistance to athletes, officials, and other participants to the Games. These counsels are typically identified and selected by the Games' local organizing committee.

Drawing on the lessons and experience gained by the Chinese and other delegations in the previous Games, it is critical for Chinese legal professionals to enhance their understanding of Olympic dispute resolution mechanisms and develop the ability to safeguard the legitimate rights and interests of their clients during these proceedings. Training sessions to be held by CAS approximately one year ahead of the Games prove to be an excellent opportunity for Chinese professionals to delve into sports dispute resolution and exchange with their international professional counterparts ideas of common concern.

More importantly, CAS *ad hoc* proceedings at the Games have been said to be best characterized as fair, fast, and free.^[102] CAS proceedings at the Games can arise and be disposed of with a written award after a hearing within 24 hours of the proceedings being filed. This accelerated time frame for arbitration is without compare anywhere else in the world. This means that for counsel to be able to represent their clients effectively they must be prepared and on top of the relevant legal rules so they can advocate effectively, and hopefully in a successful manner, for their clients in this form of an expedited proceeding. Preparation in advance is of paramount concern.

To prepare itself for Beijing 2022, the local court in charge of a major Winter Olympic event venue is taking the momentum. In December 2019, the Chongli Court of Zhangjiakou, Hebei Province, issued the *Implementation Opinions to Provide Judicial Guarantee for the Winter Olympics* (hereinafter referred to as the “Chongli Court Opinion”), which outlines an innovative, one-stop dispute resolution mechanism jointly established by the Chongli Court together with insurers and seven skiing resorts within the court jurisdiction.. The *Chongli Court Opinion* represents the effort made by the court to properly solve the increasing number of snow-sports-related disputes in an area currently containing seven skiing resorts under its jurisdiction. In order to facilitate expedient resolution of disputes, the Chongli Court established a judges’ workstation onsite, as well as created a green channel for Winter Olympics-related cases. Moreover, a trial team is designated for all skiing-related disputes to uniform, consistent trial standards. Drawing from its trial practice, the Chongli Court endeavors to coordinate and proactively share with the skiing resorts risk prevention recommendations.

Of course, there can be no court activity in the sphere of activity covered by the *Olympic Charter* and the *Host City Agreement for the Games*, namely relating to entry and participation in the Games, discipline, doping, and eligibility matters arising in connection with the Games, as those matters are exclusively reserved to CAS. But for ancillary matters potentially within court jurisdiction (where no arbitration agreement exists), like construction issues, procurement issues for goods and services related to the Games, athlete-related breaches of Chinese civil or criminal law, and similar matters, such a clearly identified court procedure would be a beneficial new method for resolving local disputes quickly and efficiently in the context of a once in a lifetime complexity and event.

4.3 Revision To Rule 40 Of *Olympic Charter* And Its Impact On Athletes’ Commercialization

In June 2019, IOC announced revision to Rule 40 of *Olympic Charter*, which, in principle, lifted the ban on Olympians from advertising their personal sponsors during the Games Period even if these sponsors are non-Olympic Partners.^[103] Exploitation by athletes of these rights must be subject to the principles established by the IOC Executive Board.^[104] For example, non-Olympic Partners shall not use any Olympic Properties,^[105] nor shall they use athletes for marketing any specific products or services during the Games Period. The revised Rule 40 leaves it up to the NOC of the athletes to set their country-specific rules relating to such advertising subject to the umbrella principles established by IOC.

In the context of China’s state sports system, only very few elite athletes may have the opportunity to sign personal sponsors. The revision to Rule 40 thus likely has limited impact on Chinese athletes participating in the Tokyo Olympic Games. However, the revised Rule 40 would be relevant to sponsors without Olympic Partner’s status but nevertheless planning to launch an Olympic-related marketing campaign through their sponsored athletes (often a dramatically cheaper option than seeking a full official Olympic sponsorship or licensee affiliation). Such athlete sponsors must ensure their compliance with Rule 40 and related

documents such as the [Commercial Opportunities for Participants during the Tokyo 2020 Olympic Games](#), as well as the applicable NOC policies.^[108]

Opening up the commercial opportunities for Olympians at the IOC level coincides, serendipitously, with similar initiative at China's national level by the General Administration of Sport.^[109] The abolition of three outdated, over-restrictive regulations limiting commercialization of athletes' individual rights might open up more space for Chinese athletes to realize their personal commercial value; more significantly, this move activates Chinese athletes' commercial potential in what will undoubtedly be an irrevocable future trend. However, these positive notes should not ignore the frequent, problematic conflicts of interest between top athletes' personal sponsors and their team sponsors, which often escalate to disputes between the concerned athletes and their governing bodies.^[110]

Take swimmer Ning Zetao ("Ning") as an example. Soon after winning the Men's 100 m Freestyle final at the 2015 FINA Swimming World Championships in Kazan, Ning was thrust into a rollercoaster of events that witnessed the athlete's fall from one of the most celebrated, highly sought-after Chinese brand darlings to a disappointment at the Rio 2016 Olympic Games, where he was unable to perform at a level reasonably expected from him, culminating in his eventual dismissal from the national swimming team. His sudden turn of fate was reportedly due to the pre-Rio distractions and pressures caused by disputes involving sponsors. In March 2019, after years of struggling in the provincial team, Ning announced his retirement at age 26. Ning's unfortunate trajectory may find its roots in the competition between his personal sponsor and the national swimming team sponsor, as well as the failure of all involved to resolve the dispute. Ning's case, along with similar incidents experienced by other top athletes, exposes the systematic and practical difficulties of commercializing the personal rights of Chinese athletes.

A successful professional career cutting short by commercial disputes entails enormous losses for all parties as athletes' commercial values climb in tandem with their professional performances. We must identify the causes of such disputes. These disputes emerge and may compromise athletes' careers because in the state-run sports context, athletes are considered subject to the total control of their governing bodies, and their individual commercial rights are subject to group interest as a result. In addition, the absence of a dispute resolution mechanism in Chinese sports puts any disagreeing athletes in a disadvantageous position as they lack the infrastructure support to communicate with their regulators on an equal footing, or have the disputes resolved by independent arbitration or mediation conducted by neutrals.

Much as has been done in other countries, China needs to develop clear rules to demarcate athletes' individual commercial rights and, to set up a dispute resolution mechanism for solving disagreements that safeguards fundamental due process. Without clear rules and a neutral dispute resolution structure, it would be impossible for Chinese athletes to realize their individual commercial values to their full potential. This, in turn, might well affect overall values of governing body's sponsorships because the individual athlete's rights would be worth less. In this regard, athletes' individual interest aligns with group interest. Considering that elite athletes' commercialization is now an important part of the national strategy written into [Policy No. 43](#), actions must be taken, and the proposals outlined in Section 4.1 above in relation to formation or designation of a proper Chinese sports arbitration institution may assist.

PART 5. SUMMARY AND PROSPECTS

Rules provide the structure for the sports industry, as with all realms of society. The rules and policies in China for the sports industry have recently been modernized, making this an exciting

time to be a sports lawyer in China or facing China from outside. The new rules seek to create new flexibility, enhanced prosperity, and a stronger Chinese sports industry.

In this chapter, we have highlighted some of the fundamental laws and regulations, and cases, to provide not a comprehensive assessment of the field but a basic understanding of the important legal issues that define the Chinese sports industry.

Almost all legal sectors may interact with sports in a certain way, thus giving rise to a wealth of cutting-edge issues that constantly pose new challenges. For example, sports dispute resolution encompasses almost all forms of dispute resolution, such as litigation, arbitration, mediation, labor dispute resolution, and internal resolution within sports organizations. The sports industry has issues involving intellectual property, employment, real estate, products, and licensing, to name a few. But disputes in this area, if not understood in the sporting context, are bound to come to an incorrect or unworkable result.

The regulations, cases, and issues we identified in this chapter suggest some of the current international features of sports and sports law, and resolving sports disputes.

In Case 1, *WADA vs Sun Yang & FINA*, highlights the necessity for Chinese athletes and their entourage to understand international rules and procedures. The case also exposes the intriguing issue of priority when applying international rules and domestic regulations.

In Case 2, the people's court correctly applied the international rules enshrined in the *New York Convention*, resulting in the recognition and enforcement of a CAS award of Swiss nationality. We also looked into relevant issues that did not emerge in this case but may well become the subject matter in slightly different practical scenarios.

Although the case of *Dalian Transcendence FC* (Case 3) involves domestic litigation, the people's court must come to a better understanding of the principles of football governance, which involves the *FIFA Statutes* and regulations, to reach the correct conclusion and ensure that all parties have access to justice.

The highly international feature of sports law is attributed to the transnational nature of sport itself — participants of different nationalities and diverse cultures compete against each other at the Olympic and FIFA levels on a country-by-country basis, transcending international legal and political boundaries. Domestic decision-makers must, therefore, be able to put their decisions in international context, as sport, because of its international nature, must observe harmonized, uniform, and universal sets of rules so that competitions and associated mechanisms are commonly governed everywhere on earth.

Arbitration is the key to this practice, because in arbitration specialized practitioners can be involved in forging the applicable legal outcomes in a way that national courts are unable to do at a macro level, and under the *New York Convention* arbitration awards are enforceable internationally.

Similarly, with the new *Singapore Convention on Mediation* providing for enforceability of international mediated agreements, in a manner similar to that provided in the *New York Convention* for arbitral awards, sports can come to rely more heavily than it now does on mediation to solve its disputes. China was one of the first nations to accede to the *Singapore Convention on Mediation*, placing it at the forefront of this new tool, and China can readily apply it to sports cases.

In light of the fast-pacing global sports industry, we must be prepared to adapt and adopt measures to address new forms of competitive endeavor in a wide variety of sports. For example, e-sports, which some conservative sports aficionados refuse to call a sport, is the fastest growing segment of head-to-head competition in an activity in the world. The Chinese sports industry is quickly taking notice, and so should the Chinese dispute resolution community because e-sports have elements in common with traditional sports in terms of competitive, discipline, doping, eligibility, and governance issues.

In conclusion, the future looks bright for sports dispute resolution in China, and the opportunities are significant; hopefully, the best and right decisions will be made in addressing the Chinese sports arbitration and mediation structure, in a timely manner, so that the sports industry in China can thrive and mature, with increasingly professionalized talents involved; Chinese athletes can realize their potentials not only in the sporting field but also in the areas of their personal interest, and at different life stages. Their persistent endeavors to reach beyond limits are bound to inspire us in all walks of life.

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Jeff is an accomplished arbitrator, mediator and certified electronic discovery specialist with JAMS in Los Angeles and London and is a Door Tenant at 4 New Square Chambers, London. Jeff started his law practice in San Francisco, first with a small maritime and admiralty firm and then with a major international law firm (Coudert Brothers) as an antitrust, commercial and IP litigator. As a former General Counsel of the United States Olympic Committee (where he was responsible for all of the legal work (commercial, regulatory, governance, and otherwise) of the world's largest and most successful National Olympic Committee), and other leading sports entities (including a stint as a California licensed professional boxing promoter, and separately as professional beach volleyball executive), and as a former athlete, Jeff's sports credentials are without compare, though sports disputes form only a part of Jeff's overall dispute resolution experience and practice.

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Guo Cai

Ms. Guo Cai oversees the International Law and Sports Business practice, Jin Mao Law Firm, the first Chinese law firm to establish a practice dedicated to the sports industry. Ms. Cai graduated from Harvard Law School and China University of Political Science and Law. She also held an LLM in Human Rights (distinction) from the University of Hong Kong. Admitted to practice in China and the US (New York), Ms. Cai specializes in international dispute resolution and sports law, with the aspiration to grow with the Chinese sports industry and connect international best practice with sports in China.

Ms. Cai's involvement in sport dated back to the Beijing Olympics in 2008, for which she served as a professional volunteer. The case of *IOC v. Xinyi Chen* in the 2016 Rio Olympics motivated her to specialize in the sports sectors so as to make quality legal services available to Chinese athletes where needed. Ms Cai has successfully represented sportspersons, national and international sports associations in disputes at both domestic and international level, with particular strengths in new, unsettled areas. In 2020, Ms. Guo Cai contributes to the debut of Annual Review on Sports Dispute Resolution in China (2020) published by the Beijing Arbitration Commission, the first time that sports has been broken out from entertainment for separate discussion. She is the co-author of this inaugural volume.

蔡果律师执业于上海市金茂律师事务所，是中国市场稀缺的、专注国际法与体育产业的涉外法律人才，致力结合国际最佳标准，与中国体育产业共同成长。她毕业于哈佛法学院和中国政法大学，并以第一名获得香港大学人权法硕士学位。负笈哈佛时，她专攻宪法，创造性地将仲裁、宪政分析专长与对体育的热爱相结合，独辟蹊径地开创了体育争议解决职业道路。蔡律师深度参与体育产业可追溯自2008年为北京奥运会担任专业志愿者；2016年里约奥运会期间的国际奥委会诉陈欣怡一案促使她投身体育法律，以在中国运动员需要时，有中国律师具备能力提供对标国际的专业法律服务。迄今，蔡律师在国际国内层面的争议解决程序中成功代理了体育专业人士、国际及国内体育组织，特别擅长处理新兴、疑难问题。2020年，蔡果律师经遴选，成为北京仲裁委员会首篇《中国体育争议解决年度观察》中英文版撰稿人。

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References

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[1] LIN Deren & YUE Dongxing, Xinhua News Agency, *The Total Scale of China's Sports and Related Industries Exceeded RMB One Trillion in 2014*, <https://news.cntv.cn/2015/12/29/ART11451345171029512.shtml>, accessed 30 January 2020.

[2] Issued and implemented on 2 October 2014.

[3] On 18 March 2020, the Bureau of FIFA Council unanimously decided that the new FIFA Club World Cup previously scheduled in 2021 was to be postponed to a later date due to the adjusted calendar of CONMEBOL Copa América and the UEFA EURO (now scheduled between 11 June and 11 July 2021), as part of the exceptional circumstances created by the COVID-19 outbreak. See <https://www.fifa.com/who-we-are/news/bureau-of-the-fifa-council-decisions-concerning-impact-of-covid-19>, accessed 21 March 2020.

[4] This judicial interpretation is not intended to criminalize the 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 could punish athletes in violation of anti-doping rules, but not people who work with athletes or have power over them; it is, therefore, crucial to hold accountable those who cause athletes' doping violations.

[5] In the 2009 amendment to the *PRC Sports Law*, Art 47 was deleted ("Sports equipment and apparatus to be used for national and international sports competitions must be subject to examination and approval by institutions designated by the administrative department for physical culture and sports under the State Council."). Article 32 in the 2009 version was deleted in 2016 ("The state practices an examination and approval system for national sports records. The national sports records shall be confirmed by the administrative department for physical culture and sports under the State Council.").

[6] PART 3, Case 3.

[7] Issued and implemented on 11 December 2018.

[8] Issued and implemented on 4 September 2019.

[9] WANG Yu, *With Fosun International Purchasing Wolverhampton Wanderers F.C., Chinese Capital Took over 11 Overseas Football Clubs in Two Years*, https://news.ifeng.com/a/20160727/49673775_0.shtml, accessed 30 January 2020.

[10] CUI Xiaolin, China Economic Weekly, *Why Are Chinese Tycoons Keen on the Money-Losing Purchasing of Overseas Football Clubs?*, <https://www.chinanews.com/cj/2016/08-23/7980833.shtml>, accessed 30 January 2020.

[11] According to pp 10 and 22 of *2018 Report on Development of China's Outward Investment* issued by the Ministry of Commerce (see: <https://images.mofcom.gov.cn/fec/201901/20190128155348158.pdf>), in 2017, China's foreign direct investment in culture, sports and entertainment reached US\$ 260 million, a sharp decrease by 93.3% year on year. In the first half year of 2018, no new outbound investment in sports had been reported.

[12] At a press conference held on 6 December 2016, managements of the National Development and Reform Commission, the Ministry of Commerce, People's Bank of China, and State Administration of Foreign Exchange remarked on current forms and policies of outbound investment and voiced their concerns about the irrational outbound investment tendency in such fields as real estate, entertainment, and sports clubs. The Ministry of Commerce, the National Development and Reform Commission, and People's Bank of China had issued related policies to strengthen the authenticity verification on outbound investment and oversight on offshore RMB lending. See: https://www.bakermckenzie.com/-/media/files/insight/publications/2017/02/new-restrictions-china-outbound-investments/al_china_newrestrictionsoutboundinvestments_jan2017.pdf?la=en, accessed 30 January 2020. In August 2017, the National Development and Reform Commission, the Ministry of Commerce, People's Bank of China, and Ministry of Foreign Affairs issued *Guiding Opinions on Further Guiding and Regulating Outbound Investment Orientation (Guo Ban Fa*

[2017] No. 74), in which sports clubs were listed as “restricted outbound investment” and subjected to the approval of competent authorities of outbound investment.

[13] On 9 August 2018, *Administrative Rules for Blacklists in Sports Market* was printed and distributed by the General Administration of Sport of China and implemented on the same day, valid for five years.

[14] Policy and Laws Department of the General Administration of Sport of China, *Report of the General Administration of Sport of China on the Work of Establishing a Law-based Government in 2018*, <https://www.sport.gov.cn/zfs/n4974/c900011/content.html>, accessed 30 January 2020. However, the legislative plan of the Standing Committee of the National People’s Congress for Year 2020 (published in June 2020) does not list the *PRC Sports Law*. See <https://www.npc.gov.cn/npc/c30834/202006/b46fd4cbdbbb4b8faa9487da9e76e5f6.shtml>, accessed 28 June 2020.

[15] On 1 July 2019, the Policy and Laws Department of the General Administration of Sport of China printed and distributed to the national sports administrations the *Notice on Supplementing and Updating the Archives of Sports Policies and Regulations and Launching the 2019 Annual Document Clean-up Work* (Ti Zheng Zi [2019] No. 108).

[16] Policy and Laws Department of the General Administration of Sport of China, *Notice of the General Administration of Sport of China on the Promulgation of the Catalogues of Sports Laws, Regulations, Rules, Normative Documents and Institutional Documents in Force*, <https://www.sport.gov.cn/n316/n336/c938805/content.html>, accessed 30 January 2020.

[17] Namely, the *Notice of the General Administration of Sport of China on Issues Related to Standardizing the Work of the Sports Project Management Centers* (Ti Zheng Zi [2001] No. 46), the *Notice on Trial Editions of Contract Management for Commercial Activities of National Team Athletes* (Ti Zheng Zi [2006] No. 78), and the *Interim Measures for Competition Prize Money Allocation for National Team Athletes* (Ti Ren Zi [2007] No. 2). See: *Notice of the General Administration of Sport of China on Abolishing Some Normative Documents*, <https://www.sport.gov.cn/n316/n336/c939910/content.html>, accessed 30 January 2020.

[18] It is worth noting that the *General Principles of the Civil Law of the People’s Republic of China* provides for personal rights such as name rights (Art 99) and image rights (Art 100); the *General Provisions of the Civil Law of the People’s Republic of China* explicitly provides for personal rights such as image rights and name rights (Art 110). The *Civil Code of the People’s Republic of China*, promulgated on 28 May 2020, which will take effect from 1 January 2021, provides further basis for protection of name rights, image rights, right to one’s voice, including the definition and licensing of these personal rights (Arts 990, 993, 1012, 1018-1023). The abolished regulations mentioned above used to put restrictions on athletes of Chinese national team to commercialize their names and images, probably due to the state-run sports system. It is a welcome initiative to lift some restrictions and allow athletes to commercialize their personal rights, though still subject to team/supervising agency’s approval for national team athletes, pursuant to Art 33 of the *Contractual Management Rules* promulgated by the General Administration of Sport of China on 11 October 2019 (in effect from 1 November 2019).

[19] YUE Dongxing & HE Jun, Xinhua Net, *LIU Peng: Football Reform Cannot “Get Quick Victory”, and “De-administration” is a Trend for Sports Associations*, <https://sports.people.com.cn/n/2015/0817/c22176-27475814.html>, accessed 30 January 2020.

[20] General Office of the State Council, *Notice on Printing and Distributing the General Plan for the Reform and Development of China’s Football Industry* (Guo Ban Fa [2015] No. 11), https://www.gov.cn/zhengce/content/2015-03/16/content_9537.htm, accessed 18 February 2020.

[21] Xinhua News Agency, *De-administration is a Trend for Sports Associations, and the Industry Will Have a Broader Prospect*, <https://industry.sports.cn/news/others/2015/0818/115405.html>, accessed 30 January 2020. YUE Dongxing & LIN Deren, Xinhua News Agency, *Football Management Center Has Been Revoked and the Decoupling of CFA Has Largely Been Achieved*, <https://sports.people.com.cn/n1/2016/0225/c14820-28147885.html>, accessed 18 February 2020.

[22] GUO Yuntong, Lanxiong Sports, *The Decoupling of 68 Sports Associations Including CBA is on Agenda, and Reform of Separating Supervision from Operation Has Taken One Step Forward*, <https://www.lanxionsports.com/posts/view/id/15934.html>, accessed 18 February 2020.

[23] For example, in China, only football and basketball are holding professional tournaments in real sense, and only football and basketball possess (or are establishing) professional leagues. Other sports lack such institutions.

[24] People’s Daily, *Chinese Professional Football League Will Be Set up Soon*, p9, 17 October 2019.

[25] CHENG Shan, Soccer News, *League Advocates the Supervision Pattern of EPL, CFA Could Have Veto Power on Major Issues*, <https://sports.sina.com.cn/china/j/2019-10-17/doc-icezuev2735378.shtml>, accessed 30 January 2020.

[26] ZHOU Fengcun, Lanxiong Sports, *Professional League to Be Established Soon, CSL Goes to Market?*, <https://www.lanxionsports.com/posts/view/id/17086.html>, accessed 30 January 2020.

[27] Guangzhou Daily, *Chinese Professional Football League Will Be Set up at the End of This Year*, <https://sports.cctv.com/2019/10/17/ARTIRGWOAcx4MxPciolwQet9191017.shtml>, accessed 18 February 2020.

[28] JI Ronghao, Xinhua Net, *What New Opportunities Would CBA 2.0 Embrace?*, https://sports.xinhuanet.com/c/2019-11/01/c_1125181880.htm, accessed 30 January 2020.

[29] ZHAO Xinyue, People.cn, *CBA Company Announced Xinjiang Guanghui Club's Priority Registration Right of Player Zhou Qi for Two Years*, <https://sports.people.com.cn/cba/n1/2019/0427/c22150-31053655.html>, accessed 30 January 2020.

[30] Beijing News, *CBA Company Launched Standard Contract: Specifying the Registration Right over Players Returning from Overseas Leagues*, <https://www.bjnews.com.cn/sport/2019/05/31/585932.html>, accessed 30 January 2020.

[31] CAI Guo, *Why Sports Broadcasters in China Cannot Currently Rely on Copyright Law to Protect against Unauthorized Livestreams (and Possible Solutions)*, <https://www.lawinsport.com/topics/item/why-sports-broadcasters-in-china-cannot-currently-rely-on-copyright-law-to-protect-against-unauthorised-livestreams-and-possible-solutions>, accessed 31 January 2020.

[32] *Implementation Opinions of Shanghai Municipal People's Government on Accelerating the Development of Sports Industry and Promoting Sports Consumption* (Hu Fu Fa [2015] No. 26), issued on 1 July 2015.

[33] Hu Fu Fa [2018] No. 31 issued on 9 August 2018. The document reiterated Shanghai's ambition to become "Oriental Lausanne" with its endeavor to attract international sports organizations, exhibitions, and enterprises. Above international blueprint is "to promote Shanghai's influence and bargaining power in international sports market," which is highly forward-looking in Chinese context.

[34] Since the beginning of 2018, Chengdu issued a series of policy papers such as *Action Plan for Chengdu to Create an Internationally Famous Event City* (Cheng Ban Han [2018] No. 24), *Chengdu Sports Industry Revitalization and Development Plan (2020-2025)*, and *Notice on Policies and Measures for Chengdu to Create an Internationally Famous Event City and Promote the Development of Sports Industry* (Cheng Ban Fa [2019] No. 32).

[35] On 1 February 2018, Chengdu Municipal People's Government printed and distributed *Action Plan for Chengdu to Create an Internationally Famous Event City* (Cheng Ban Han [2018] No. 24). Item 2 of Part 1 (Development Plan) lays out the plans to host 67 international sports events in 2018-2020 (three years), including 21 events in 2018, 22 events in 2019, and 24 events in 2020, in which intercontinental championships or above will account for 50%.

[36] For example, in the *Action Plan for Chengdu to Create an Internationally Famous Event City* (Cheng Ban Han [2018] No. 24), Item 2 of Part 2 (Implementation of Brand Events Cultivation Project) specifies the plans to enhance cooperation with international sports organizations and upgrade current international events, i.e. to upgrade ITTF World Tour Platinum China Open (Chengdu) to Table Tennis World Cup and Championships, ATP250 Chengdu Open to an ATP 500-level event, and FISE Festival International des Sports Extrêmes to annual finals.

[37] The document specifies strengthening the introduction (to Chengdu) of international sports events, with plans to focus on NBA pre-season and multi-sport games, such as the Youth Olympic Games, Asian Games, East Asian Youth Games, National Games, and National Youth Games. Bidding work shall start when ready.

[38] In the *Notice on Policies and Measures for Chengdu to Create an Internationally Famous Event City and Promote the Development of Sports Industry* (Cheng Ban Fa [2019] No. 32), Item 4 specifies: "As for internationally famous sports events hosted in Chengdu, not more than RMB 8 million shall be given as subsidies for holding such events. As for brand events independently cultivated by Chengdu that demonstrate large market value potential, broad development prospect and international influence, not more than RMB 5 million shall be given as subsidies for holding such events. As for nationally famous sports events hosted in Chengdu, not more than RMB 3 million shall be given as subsidies for holding these events. In principle, subsidies shall not exceed 50% of the cost for holding a particular event."

[39] Xinhua Net, *How Did Chengdu Dramatically Improve Its Global Event Influence from 89th to 28th?*, https://m.xinhuanet.com/sc/2019-09/03/c_1124954220.htm, accessed 31 January 2020.

[40] IOC, *IOC, IPC, Tokyo 2020 Organizing Committee and Tokyo Metropolitan Government Announce New Dates for the Olympic and Paralympic Games Tokyo 2020*, <https://www.olympic.org/news/ioc-ipc-tokyo-2020-organising-committee-and-tokyo-metropolitan-government-announce-new-dates-for-the-olympic-and-paralympic-games-tokyo-2020>, accessed 31 March 2020. As a result, Summer Universiade has to reschedule again and be held between 18 and 29 August 2021. See: Ecns.cn, <https://www.ecns.cn/news/2020-03-31/detail-ifzuwwmz9246309.shtml>, accessed 31 March 2020.

[41] FIFA, Bureau of the FIFA Council Decisions Concerning Impact of COVID-19, <https://www.fifa.com/who-we-are/news/bureau-of-the-fifa-council-decisions-concerning-impact-of-covid-19>, accessed 31 March 2020. The FIFA Council decision includes postponing the new FIFA Club World Cup, which was due to take place in June/July 2021.

[42] Decision of the FINA Doping Panel (FINA Decision), 3 January 2019, p8, para 4.11.

[43] *Ibid*, p20, para 4.45.

[44] *Ibid*, p20, para 4.46.

[45] *Ibid*, p58, para 7.1.

[46] *Ibid*, p48, para 6.35.

[47] CAS Media Release, https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_6148_Public_Hearing.pdf, accessed 22 March 2020.

[48] CAS Media Release, https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_6148_Hearing_15.11.19.pdf, accessed 22 March 2020.

[49] Article 57 of the CAS Arbitration Rules ("The Panel has full power to review the facts and the law."). Even if CAS agrees with the FINA Doping Panel that the authorization documents provided by the IDTM personnel were insufficient, CAS may assess whether the defect was severe enough to invalidate the doping control session on its entirety, and whether the athlete's refusal to undertake the testing constituted a doping violation.

[50] The Award, para 297.

[51] *Ibid*, para 336.

[52] *Ibid*, paras 336, 338, and 344.

[53] *Ibid*, para 346.

[54] *Ibid*, para 347.

[55] *Ibid*, para 349.

[56] *Ibid*, para 364.

[57] *Ibid*, paras 365 and 366.

[58] *Ibid*, para 366.

[59] *Ibid*, para 376.

[60] *Ibid*, para 380.

[61] *Ibid*, para 204.

[62] *Ibid*, paras 195-198 and 204.

[63] *Ibid*, paras 208 and 212.

[64] *Ibid*, para 206.

[65] *Ibid*, paras 211, 335, and 336.

[66] *Ibid*, paras 297 and 309.

[67] *Ibid*, paras 309, 310, 323, 327, 333, 334, and 339.

[68] *Ibid*, para 208.

[69] *Ibid*, para 209.

[70] *Ibid*, para 209.

[71] *Ibid*, para 356 ("It was striking that, in the course of his testimony, at no point did the Athlete express any regret as to his actions, or indicate that, with the benefit of hindsight, it might have been preferable for him to have acted differently. Rather, as the proceedings unfolded, he dug his heels in and, eventually, sought to blame others for the manifest failings that occurred.").

[72] *Ibid*, paras 356 and 357 ("He sought to shift the blame to the DCO, the BCA and the DCA, and at no point, in the appreciation of the Panel, did he confront the possibility that he might have overreacted in his actions.").

[73] *Ibid*, para 327 ("In this regard, the Panel notes that the Athlete appears to have a forceful personality, and seems to have an expectation that his views should be allowed to prevail.").

[74] *Ibid*, para 358 ("He did not seem to deem it necessary to seek the permission of the Panel, or to otherwise act in a manner which suggested that he respected the authority of others, or of established procedures.").

[75] *Ibid*, para 357 ("The Panel notes that during the hearing, and in particular during his final words at the end of the hearing, the Player continued to rely on formalistic legal arguments related to the proper accreditation and authorisation of IDTM's Sample Collection Personnel.").

[76] Article 27 of the *Code of Sports-related Arbitration* ("These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS.").

[77] Article 16 of the *Provisions of the Supreme People's Court on Several Issues Concerning Trying Cases of Arbitration-related Judicial Review*.

[78] Civil Ruling Ref. (2017) Liao 02 Min Chu No. 583, *Juan de Dios Crespo Pérez & Alfonso Vargas vs. Yifang*, 1 August 2017.

[79] Civil Ruling Ref. (2019) Liao 02 Zhi Yi No. 122, 14 March 2019.

[80] FU Panfeng, *Recognition and Enforcement of CAS Awards in China – An Analysis of the Yi Fang Case*, Journal of Chongqing University of Science and Technology (Social Sciences Edition) (2019), Issue 6, pp114-115 ("Some scholars take the view that sports activities are civil or commercial affairs, so they opine that sports arbitration can be included in the commercial legal relationship as encompassed by the commercial reservation... Some scholars even proposed that the CAS awards concerning disciplinary and governing issues should be considered as 'non-contractual legal commercial relation' and believed that all CAS awards could be recognized and enforced in China under the *New York Convention*, while others believed that sports management and disciplinary measures, with administrative features and attributes of personal rights, should not be considered civil or commercial affairs.").

[81] Agustín Amoros Martínez & Santiago Santorcuato Caffa, “*Enforcement of CAS Awards: A General Review of the Available Options and Its Particularities*”, *Football Legal*, p138 (“Although the option of enforcing a sports arbitration award pursuant to the *1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York Convention) is always available to parties, it is in practice almost never necessary to pursue this course of action, as sports governing bodies have sufficient internal authority and enforcement mechanisms to impose the awards against their members.”).

[82] *Ibid*, p139 (“the practice of self-execution by federation or association of award is very effective since, in most cases, the disciplinary sanction associated with the failure to award brings immediate and serious consequences which are more than the enforcement of the award through the New York Convention”); this opinion has been validated by an example. See: Etienne Gard, *Stepping Outside the New York Convention – Practical Lessons on the Indirect Enforcement of CAS-Awards in Football Matters*, <https://www.asser.nl/SportsLaw/Blog/post/stepping-outside-the-new-york-convention-practical-lessons-on-the-indirect-enforcement-of-cas-awards-in-football-matters>, accessed 31 January 2020. The article cites a dispute over the brokerage between a football agent and a club registered with the UAE Football Association. CAS upheld the appeal filed by the agent. To enforce the CAS award, the agent sent an email to the UAE Football Association, FIFA, and AFC copied, claiming that the club registered with the UAE Football Association must perform the award, or the UAE Football Association will be subject to disciplinary measures. The agent received the money owed by the football club in weeks.

[83] Turkey also made commercial reservation. Turkish legal professionals take the view that CAS awards on appeals are not of a commercial nature, so CAS awards on appeals could not be recognized and enforced under the *New York Convention*. See: Hergüner Bilgen Özeke, *Law in Sports: International Sports Arbitration*, <https://www.lexology.com/library/detail.aspx?g=26d596bc-2e14-414e-a59d-ff23bbbe12f8>, accessed 31 January 2020. In addition, there are very few CAS awards known to have been recognized and enforced under the *New York Convention*, and any CAS award reportedly enforced by a national court under the *New York Convention* concerned pecuniary obligations. See: Martínez & Caffa, *supra* note 82, p140, fn 460. In *Pencil Hill Ltd. vs. US Citta di Palermo S.p.A.*, the English High Court recognized and enforced the CAS award in accordance with the *New York Convention*. The award concerns the registered player’s economic right and liquidated damages. See: *Should a New York Convention Award Be Enforced in the Courts of England and Wales If It Includes an Award in Respect of a Penalty? The English High Court’s Decision in Pencil Hill Ltd. vs. US Citta di Palermo S.p.A.*, <https://www.newyorkconvention.org/news/should+a+new+york+convention+arbitration+award+be+enforced+in+the+courts+of+england+and+wales+if+it+includes+an+award+in+respect+of+a+penalty+the+english+high+court+decision+in+pencil+hill+limited+v+us+citta+di+palermo+s-p-a+-+case+no+ba40ma109+-+unreport>, accessed 31 January 2020.

[84] Frans de Weger, *The Jurisprudence of the FIFA Dispute Resolution Chamber* (2nd Edn), Springer (2016), 2.20.4.1, p102 (“As was stated by the CAS in its award of 1 June 2010 between FC Sion and Al Ahly, FIFA proceedings are not court proceedings, and neither arbitral proceedings, rather, they are ‘intra-association proceedings’, based on the private autonomy of the association...”).

[85] Including (1) *Cui Kai vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5879; (2) *Dong Zhiyuan vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5279; (3) *Liu Yuchen vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5196; (4) *Wang Yi vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5883; (5) *Xie Zhaoyu vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5290; (6) *Quan Heng vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 6296; and (7) *Ötkür Hesen vs. Dalian Transcendence*, Civil Ruling No. (2019) Liao 02 Min Zhong No. 8084.

[86] *Quan Heng vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 6296, 26 July 2019, was an exception. In this case, the Dalian Intermediate Court overturned the ruling of first instance and instructed the Shahekou People’s Court to re-hear the case. See the paragraphs below for the possible reasons behind the inconsistent results as seen in Quan Heng’s case and other cases.

[87] *Cui Kai vs. Dalian Transcendence*, Civil Ruling Ref. (2019) Liao 02 Min Zhong No. 5879, 18 July 2019.

[88] Shenyang Intermediate Court, Civil Ruling Ref. (2015) Shen Zhong Min Wu Zhong Zi No. 1056, 21 May 2015.

[89] Tiexi Court, Civil Ruling Ref. (2015) Shen Tie Xi Min Si Chu Zi No. 01195, 15 December 2015.

[90] Shenyang Intermediate Court, Civil Ruling Ref. (2016) Liao 01Min Zhong Zi No. 1896, 3 June 2016.

[91] Shenyang High People’s Court made the Civil Ruling Ref. (2017) Liao Min Shen No. 1364 on 28 November 2017 to instruct Shenyang Intermediate Court to re-hear the case.

[92] Shenyang Intermediate Court, Civil Ruling Ref. (2018) Liao 01 Min Zai No. 32, 23 April 2018.

[93] *Quan Heng* vs. *Dalian Transcendence*, Civil Ruling Ref. No. (2019) Liao 02 Min Zhong No. 6296, 26 July 2019.

[94] Articles 22-24 of the *FIFA Regulations on the Status and Transfer of Players* (January 2020 edition).

[95] See PART 3, Case 3.

[96] Article 58(1) of the *FIFA Statutes* (2019 Edition).

[97] Article 58(3)(c) of the *FIFA Statutes* (2019 Edition).

[98] On 20 December 2005, FIFA issued *Circular 1010* which explained the minimum international procedural standards that an “independent” and “legally established” arbitral tribunal should meet. The original texts are:

- (1) principle of parity when constituting the arbitration tribunal,
- (2) right to an independent and impartial tribunal,
- (3) principle of a fair hearing,
- (4) right to contentious proceedings, and
- (5) principle of equal treatment.

[99] Article 32 of the *PRC Sports Law*.

[100] Article 8(10) of the *Legislation Law of the People's Republic of China* (implemented on 15 March 2015) stipulates that the arbitration and litigation system can only be formulated by law.

[101] WANG Xi, Xinhua News Agency, *Chinese Arbitral Institutions Handled a Total of More than 2.6 Million Cases since the PRC Arbitration Law*, https://www.gov.cn/xinwen/2019-03/28/content_5377853.htm, accessed 22 March 2020.

[102] This characterization might be best associated with the Vice President of the International Council on Arbitration for Sport, Michael Lenard, Esq., who coined it approximately twenty years ago to describe the CAS service offering through the *ad hoc* division on the site of the Games.

[103] The “Games Period” was originally defined as starting from 14 July 2020 until 11 August 2020 inclusive. See: *infra* note 105. Given the postponement of the Tokyo Olympic Games officially announced on 24 March 2020, the Games Period must be rescheduled accordingly.

[104] IOC, *Commercial Opportunities for Participants during the Tokyo 2020 Olympic Games*, https://www.olympia.at/download/files/%7B9D130C87-FAEA-41B7-88A3-935D76187A5D%7D/Commercial_opportunities_for_Participants_during_the_Tokyo_2020_Olympic_Games.pdf, accessed 20 February 2020.

[105] Section g of Principle 2 (Advertising by Non-Olympic Partners) as established by the IOC Executive Board defines the Olympic Properties. See: *supra*, note 105.

[106] Such as policies stipulated by NOC governing the sponsored athlete(s), or the targeting country(ies) where the sponsor plans to implement Olympic marketing campaign.

[107] *Supra*, see also PART 2.3.2.

[\[108\]](#) Such as potential conflicts of interest between individual athlete sponsors, sponsors contracted with the athlete's governing associations, league sponsors, sponsors contracted with event organizing committees, or sponsors of the future "Team China" under planning.