

# Sports Law 2020

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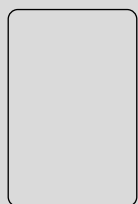
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# Sports Law

## 2020

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Lexology Getting The Deal Through is delighted to publish the second edition of *Sports Law*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Austria.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Centrefield LLP and Laffer Abogados, the contributing editors, for their assistance in devising and editing this edition.



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# Brazil

Simone Lahorgue Nunes, Allan Nascimento Turano and Camila Mariotto\*

Levy & Salomão Advogados

## REGULATORY

### Governance structure

1 | What is the regulatory governance structure in professional sport in your jurisdiction?

The main federal statute establishing general rules on sports in Brazil is known as the Pelé Law (Law No. 9,615/1998). Among other matters, it regulates article 217 of Brazilian Federal Constitution and determines a decentralised governance structure in professional sport.

The Brazilian national sports system consists of sports governing bodies, leagues and clubs organised in an autonomous and collaborative manner, and integrated by technical criteria pertaining to each sports modality. Such entities are private and autonomous with respect to their organisation and operations. They should act under their mandates as provided for by their respective by-laws (article 16 of the Pelé Law).

Entities of the public administration also play an important role in Brazilian sport, such as the Secretariat of Sports (a body of the Brazilian Ministry of Citizenship) and the National Sports Council (article 4, items I and III). The latter is responsible for approving the Brazilian Sports Code and the Anti-Doping Code (article 11, items VI and VII).

In 2015, the Fiscal Responsibility Sports Law (Law No. 13,155/2015) was enacted. This provides for the principles and practices of fiscal and financial responsibility, as well as for the transparent and democratic management of professional football organisations.

### Protection from liability

2 | To what extent are participants protected from liability for their on-field actions under civil and criminal law?

There is no specific rule, whether in civil or criminal areas, regarding damage or offences caused by athletes by their on-field actions.

The general civil liability rule of the Civil Code (Law No. 10,406/2002) states that whoever voluntarily or by omission, negligence or imprudence, violates rights and causes harm to another person, even if the damage is exclusively moral, commits an unlawful act (article 186). In such case, the wrongdoer must compensate the aggrieved party (article 927).

Note that the employer is assigned the responsibility to compensate the wronged party for a harm caused by the employee in the course of his or her work, or as a result of such work (article 932, item III). This indirect liability regime applies to the club-athlete relationship, so that the club may be held liable for athletes' actions. Under the Pelé Law, clubs are required to hire life and personal accidents insurances to cover risks to which athletes are subject in their professional activities (article 45).

There are grounds to sustain that athletes shall not be held liable for their ordinary on-field actions. It should be considered that the exercise of this lawful activity implies some risks (eg, injuries) that

professional players are aware of (article 188, item I of the Civil Code and article 23, item III of the Criminal Code, Decree-Law No. 2,848/1940). Causing serious injuries, however, can be considered a crime in certain situations when the athlete acts wilfully.

### Doping regulation

3 | What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

In 2016, Ordinance No. 1 of the National Sports Council approved the Brazilian Anti-Doping Code, which adopts the WADA Code for doping matters. The body in charge of enforcing doping rules in Brazil is the Brazilian Authority on Doping Control (ABCD). Among other duties, the ABCD is responsible for establishing and coordinating the anti-doping system, liaising with international bodies, and enforcing international rules, working together with the Anti-Doping Sports Justice (JAD) (article 48-B, items I to IX and article 55-A of the Pelé Law).

The JAD has authority to (i) judge anti-doping rules violations and impose the relevant sanctions and (ii) ratify decisions from international bodies in relation to violations of anti-doping rules. Its structure is composed of a court and a prosecution division.

As a general principle, the athlete's liability is strictly for his or her own actions (article 7, item II of the Brazilian Anti-Doping Code). The athlete is liable for any substances inside his or her body, so that the absence of fault or negligence is irrelevant (article 9, paragraph 1).

With regard to secondary liability, the Brazilian Anti-Doping Code establishes the liability of those who give substances to an athlete in competition, or contribute to, facilitate or collaborate with the illegal ingestion of substances (articles 16 and 17).

### Financial controls

4 | What financial controls exist for participant organisations within professional sport?

Clubs must fulfil their obligations regarding payment of taxes, labour, salaries and image rights (article 10, paragraph 1, item II of the Fan Statute, Law No. 10,671/2003). If such obligations are not complied with, clubs can be forced to play in a lower division of a given championship. In addition, entities can only benefit from tax exemptions and public subsidies if they are financially healthy and transparent, and have no tax or labour debts (articles 18 and 18-A of the Pelé Law). There are no salary caps applicable.

## DISPUTE RESOLUTION

### Jurisdiction

#### 5 | Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

The Federal Constitution establishes that the Sports Justice has jurisdiction over the resolution of sport-related disputes. The Judiciary Power can only assess these matters after the Sports Justice has assessed the claims in a definitive manner (article 217, paragraph 1).

The Pelé Law dictates that the Sports Justice is independent of the sports governing bodies. It consists of the Superior Court of Sports Justice, the local courts and their respective disciplinary commissions. Proceedings held before the sports courts are governed by the Brazilian Sports Code. This applies to actions strictly linked to sports practice or management.

The Pelé Law admits arbitration as an alternative method for settling disputes, provided that such disputes do not involve matters related to sports discipline and sports competitions (article 90-C). The Brazilian Football Federation (CBF) has its own alternative dispute resolution chamber – the National Chamber of Dispute Resolution. Appeals against the decisions of this chamber shall be addressed to the Brazilian Centre of Mediation and Arbitration (CBMA).

With regard to infringing the rules of world football governing body FIFA, the regulation applicable is FIFA's Disciplinary Code. FIFA's dispute resolution structure is composed of three bodies: the Disciplinary Committee, the Ethics Committee and the Appeal Committee. The decisions of these committees are subject to further review by the Court of Arbitration for Sport, based in Lausanne, Switzerland.

### Enforcement

#### 6 | How are decisions of domestic professional sports regulatory bodies enforced?

The Federal Constitution determines that sports governing bodies are autonomous. They have power to issue binding rulings, impose sanctions (provided that due process is assured) and create their own courts, with jurisdiction limited to the related leagues (article 50 of the Pelé Law). The decisions issued can be subject to review by appeal courts of the Sports Justice (article 53, paragraph 3).

### Court enforcement

#### 7 | Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

As mentioned in 'Jurisdiction', the Federal Constitution determines that the Judiciary Power can only assess sport-related matters after the Sports Justice has assessed the claims in a definitive manner (article 217, paragraph 1). The Pelé Law states that a ruling from the Judiciary cannot affect in any way the sports aspects of the decision issued by the Sports Justice (article 52, paragraphs 1 and 2).

Notwithstanding the provisions mentioned above, there are at least two cases where the courts reversed the decision issued by the Sports Justice. The 10th Federal Court of the State of Pernambuco ruled a dispute between Clube de Regatas do Flamengo and Sport Club do Recife regarding the winner of the Brazilian Football Championship of 1987. The Court declared the latter the champion, and the Brazilian Federal Supreme Court maintained this decision in April 2017, after a new appeal from Clube de Regatas do Flamengo.

In another case, in 1999, after being relegated to the second division of the Brazilian Football Championship, Sociedade Esportiva do Gama, a football club from Brasília, filed a lawsuit trying to void the relegation. The 21st Federal Court of the Federal District rendered a

decision in its favour and ordered the Brazilian Football Confederation (CBF) to alter the ranking, which changed the promotions and relegations of that year.

It is worth noting that the Labour Court usually deals with disputes arising from non-compliance with labour standards involving a professional athlete, including transfer-related matters. The claims are grounded in the fact that the right to work is a fundamental right and considered a matter of public interest; therefore, not conditioned to the previous judgments of sports bodies (articles 5, item XXXV and 114, item IX of the Federal Constitution).

## SPONSORSHIP AND IMAGE RIGHTS

### Concept of image rights

#### 8 | Is the concept of an individual's image right legally recognised in your jurisdiction?

Rights related to image, voice, names, nicknames, physical characteristics, appearance, etc, are personality rights already protected by the Federal Constitution, the Civil Code and the Pelé Law. They do not need any kind of registration to be enforced.

The Federal Constitution provides the inviolability of the image rights and the entitlement to compensation for economic and moral damage in case of violation (article 5, items V and X). The Civil Code grants to any individual the right to halt any threat or violation of their personality rights, as well as to claim compensation for damages (articles 12 and 20).

As a general rule, personality rights cannot be assigned nor waived. However, the exploitation of an individual's image for specific purposes can be granted to third parties by means of licence agreements.

The Federal Constitution also provides for the protection of the reproduction of human voices and images, including in sports activities, which shall be regulated by law (article 5, item XXVIII, a) (see 'Commercialisation and protection').

### Commercialisation and protection

#### 9 | What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Pursuant to the Pelé Law, the right to exploit the images of sports events is granted to the sports teams that participate in any given competition (article 42). The law grants this right to the teams as a way to enable the exploitation of players' images on-field.

Except in cases of a collective convention setting forth a different percentage, 5 per cent of the revenues originated from the exploitation of these rights shall be transferred to the professional athletes' unions. The unions are responsible for distributing the amount among the players that took part in the relevant sports event.

The use of players' individual images for advertising or any other commercial activity depends on previous agreements entered into between the players and the third party willing to exploit their images (see 'Concept of image rights').

For the sake of clarification, players can assign to their teams individual images rights for publicity purposes, but statutory law does not automatically grant this to the teams. In any case, the amount corresponding to the image rights payable by the team cannot surpass 40 per cent of a player's total compensation (ie, the aggregate of salaries and image rights; according to article 87-A, sole paragraph of the Pelé Law).

## 10 | How are image rights used commercially by professional organisations within sport?

Athletes' image rights can be object of promotional actions made by the club itself or to promote third parties' products or services by means of licensing agreements.

As mentioned in 'Concept of image rights', image rights are personality rights, and as such they are considered fundamental rights of the individuals. Because of this, any agreement related to an athlete's image must be interpreted restrictively in a way that it is beneficial to the athlete. Therefore, a given agreement should expressly refer to all the forms of exploitation authorised by the athlete, otherwise such use can be considered unlawful as it lacks proper authorisation.

Recently, several football players have sued companies that develop electronic games because they included them as characters in the games without prior authorisation. The companies argued that they were authorised by the relevant clubs where the athletes play. According to the companies, such authorisation entitled them to exploit the athletes' images by any means. However, it was found that the agreements entered into between the clubs and the athletes did not provide for the assignment of their images to third parties. As a result, the courts have prevented said companies from continuing to use athletes' images.

### Morality clauses

## 11 | How can morality clauses be drafted, and are they enforceable?

Employment, licensing and sponsorship agreements can include morality clauses addressing the behaviour of the athlete. Inappropriate behaviour can lead to contractual sanctions, termination or even compensation to be paid by the athlete. Morality clauses are enforceable.

### Restrictions

## 12 | Are there any restrictions on sponsorship or marketing in professional sport?

Besides federal laws regarding specific products and services, the regulation of advertisements in Brazil is carried out through self-regulation by the advertising market stakeholders, through the National Council for Self-Regulation of Advertising (CONAR) that issued the Brazilian Advertising Self-Regulation Code (the CONAR Code). Although the CONAR Code is an instrument of self-discipline of advertising activity, it is common that authorities and courts mention it as a reference document or a subsidiary source in the context of the advertising legal framework.

The CONAR Code states that advertisements of any alcoholic beverages may not use Olympic sports uniforms to promote a brand. Publications (including advertisements) directed to minors may not contain illustrations, photographs, captions, stories or publicity of alcoholic beverages, tobacco, weapons, ammunition, lotteries or improper material (and neither may such products be presented by minors) and should respect the ethical and social values of the person and family, as well as give special attention to safety and good manners.

In addition, gambling and games of chance are forbidden in Brazil and constitute a criminal offence, except for official lotteries and authorised horse racing, which can be advertised. Therefore, gambling-related sponsorship or marketing is not admitted in general.

Free-to-air or pay-TV broadcasters are not allowed to advertise their own brands, their channels brands, and their TV shows brands in the uniforms of the teams (article 27-A, paragraph 5 of the Pelé Law).

## BRAND MANAGEMENT

### Protecting brands

## 13 | How can sports organisations protect their brand value?

Leagues, federations and other sports entities usually have their own symbols and insignias, and hold intellectual and industrial property rights related to them. According to the Law on Industrial Property (Law No. 9,279/1996), trademarks and other industrial property rights must be registered with the National Institute of Industrial Property (INPI), which is the official agency responsible for granting registration of trademarks, patents and industrial designs, etc. In order to register their trademark in several countries at the same time, stakeholders will be able to count on the facilities of the Madrid Protocol from October 2019. Symbols and names related to sports events organisers and teams are protected by the Pelé Law (article 87). The Olympic symbol is also protected by the Nairobi Treaty 1981, to which Brazil is a signatory party.

## 14 | How can individuals protect their brands?

Names and nicknames of athletes are protected by the Pelé Law (article 87) regardless of previous registration with the INPI. Individuals can also protect their brands through registration as trademarks with the INPI, when a certain name has become relevant enough to identify certain products or services.

### Cybersquatting

## 15 | How can sports brands and individuals prevent cybersquatting?

In addition to the protection of the Pelé Law, individuals and entities owning sports brands may register their local internet domain names in Brazil, adopting the extension .br. Such registration is made through the website <https://registro.br/>, maintained by the Brazilian Network Information Centre. Besides that, names, product names and corporate logos can be registered as trademarks (see 'Protecting brands').

### Media coverage

## 16 | How can individuals and organisations protect against adverse media coverage?

The Federal Constitution establishes as fundamental rights the freedom of expression and the right to information, but also individual rights, such as the right to privacy, honour and image (article 5, IX, X and XIV). Media coverage must strike a balance between these constitutional rights.

If the press negatively affects the honour or image of an athlete, the aggrieved party may resort to the court and claim for an indemnification for damage or to have the right to reply (articles 5, item V of the Federal Constitution and 927 of the Civil Code). In exceptional cases, courts may also determine the withdrawal of the offensive publication, if requested. Serious insults by the media can also constitute crimes against a person's reputation – libel, defamation and slander (articles 138, 139 and 140 of the Criminal Code). The journalist may be sentenced to imprisonment (although in practice this has never happened) or to pay a fine, or both.

## BROADCASTING

### Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

Although sports teams have the exclusive right to exploit the events organised by them (see 'Commercialisation and protection'), excerpts of such events can be used by non-rights holders, exclusively for journalistic, sportive or educational purposes, or to promote sporting bets allowed by the law, provided that (i) the images are captured in places of the venues reserved to non-rights holders or, if such places are not available, the images are provided by the relevant rights holder; (ii) the exhibition does not exceed 3 per cent of the total duration of the sports event; and (iii) the exhibition of the images is not associated with any kind of sponsorship, publicity or merchandising (article 42, paragraph 2 of the Pelé Law).

### Restriction of illegal broadcasting

18 | What means are available to restrict illegal broadcasting of professional sports events?

According to the Copyright Act (Law No. 9,610/1998), broadcasters are granted with exclusive rights to authorise or prohibit the broadcasting of their transmissions ('neighbouring rights', article 95). Violation of copyright and neighbouring rights subjects the offender to imprisonment, as well as to the payment of a fine (article 184 of the Criminal Code).

Sports events rights holders have to enter into judicial proceedings against the wrongdoer, requesting a preliminary injunction to halt unauthorised transmissions of the relevant event.

With regard to content made available online, according to the Civil Rights Framework for the Internet (Law No. 12,965/2014) the court may, upon request of the rights holder, order the internet application providers to immediately block the websites appointed as illegally broadcasting content (article 19).

In addition to the request to stop illegal broadcasting, rights holders usually demand indemnification as compensation for the damage suffered. According to recent case law, courts are likely to grant both such claims.

## EVENT ORGANISATION

### Regulation

19 | What are the key regulatory issues for venue hire and event organisation?

The Fan Statute sets forth the obligations concerning venue hire and event organisation. Sports bodies have a duty of transparency and must make available on their website all relevant information on the competition, such as: (i) its regulations; (ii) the schedule, location and referees appointed to the upcoming matches; and (iii) the revenues of past matches (article 5).

Sports bodies are also required to inform the date of each match at least 48 hours in advance, as well as hire insurance to cover accidents, take all the necessary health and safety measures (article 16) and ensure fans' accessibility to the stadium (article 27).

Students, elderly people and disabled people are also entitled to special rights, such as half-price tickets. The organiser must hold at least 40 per cent of the tickets to be sold with such discount (article 9 of Decree No. 8,537/2015).

The Consumer Defence Code (Law No. 8,078/1990) provides that fans must be protected from any risk to their health and safety, as well

as from misleading and abusive advertising or other improper practices (article 6, items I and IV).

### Ambush marketing

20 | What protections exist against ambush marketing for events?

Under the Law on Industrial Property, ambush marketing is considered a crime of unfair competition, which subjects the offender to imprisonment from three months to one year, as well as the payment of a fine (article 195, item IV).

### Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

Yes. The Fan Statute criminalises touting and imposes a penalty of two to four years' imprisonment, as well as the payment of a fine (article 41-G). If such crime is committed by a public servant, a club manager, an employee of a sports entity or an employee of the company responsible for selling the tickets, the penalty shall be increased by one-third (article 41-G, sole paragraph). The Fan Statute also states that the home team must implement a security system against fraud in this activity (article 21).

## IMMIGRATION

### Work permits and visas

22 | What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

The entry and permanent stay of foreigners in Brazil, including professional athletes and administrative staff, are governed by Law No. 13,445/2017 (the Migration Law) and Decree No. 9,199/2017.

In accordance with Normative Resolution 16/2017 of the National Immigration Council (a body of the Brazilian Ministry of Justice and Public Security), a temporary visa is granted to athletes, coaching and administrative staff staying more than 90 days in Brazil to participate in events in case of a fixed-term contract.

Clubs intending to hire athletes for regular employment relationships under an employment contract must seek a residency authorisation from the Ministry of Justice and Public Security and a temporary visa as required in Normative Resolution 21/2017 (NR 21) of the National Immigration Council. See 'Residency requirements' for further details.

23 | What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

Those who wish to participate in a sports competition in Brazil must apply for a visitation visa valid for 90 days (article 29, seventh paragraph of Decree No. 9,199/2017). Citizens from Australia, Canada, Japan or the United States are not subject to this visa (article 1 of Decree No. 9,731/2019). If they intend to stay in the country for a longer period, a temporary visa must be requested, provided that the person has a contract for a fixed term with a Brazilian entity. See 'Work permits and visas'.



## Residency requirements

24 | What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Foreign professional athletes, coaching and administrative staff who wish to settle residence in Brazil for work purposes must obtain the authorisation of the Brazilian Ministry of Justice and Public Security, as mentioned in 'Work permits and visas'.

For this purpose, the minutes of an employment contract lasting at least three months and no longer than five years must be submitted to such authority. The authorisation shall be granted for such period and may be renewed if necessary (articles 3 and 4 of NR 21).

25 | Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Neither the Migration Law, Decree No. 9,199/2017, nor NR 21 expressly state that the residency authorisation is extended to the sports professionals' family members. However, it is usually granted to their relatives as well. NR 21 establishes that the person who requests the authorisation must undertake, on his or her behalf and on the behalf of his or her family members, to return to his or her country of origin (article 2, item I, c).

## SPORTS UNIONS

### Incorporation and regulation

26 | How are professional sporting unions incorporated and regulated?

A sports union is incorporated as an association through the register of its by-laws with the Civil Register of Entities located in the same state in which the union is headquartered (article 45 of the Civil Code).

Despite the fact that the Federal Constitution imposes that no authorisation must be required for the creation of a union, its registration with the Brazilian Ministry of Justice and Public Security is mandatory (article 8, item I).

Unions are regulated by the Decree-law No. 5,452/1943 (Consolidation of Labour Laws), which ensures the right to association of employers, employees, self-employed workers, independent agents, and liberal professionals exercising equal or similar professions or activities, aiming to coordinate patrimonial and professional interests (article 511). Besides that, the Pelé Law entitles the athletes to be represented by unions in matters related to employment contracts with sports entities (article 90-D).

### Membership

27 | Can professional sports bodies and clubs restrict union membership?

No.

### Strike action

28 | Are there any restrictions on professional sports unions taking strike action?

The right to strike is granted by the Federal Constitution as a fundamental right (article 9). There are no specific restrictions to sports unions engaging in strike actions besides the general restrictions, such as the prohibition to block access to the club's facilities, as well as threatening or causing any harm to people or their property (article 6, paragraph 3 of the Strike Law, Law No. 7,783/1989).

## EMPLOYMENT

### Transfers

29 | What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

With regard to football, FIFA's Regulations on the Status and Transfer of Players (RSTP) and the CBF's National Regulation of Registers and Transfers of Football Players (the CBF Regulation) rule individual transfers of players moving to or from Brazil.

In accordance with the RSTP:

- a club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him or her (article 18);
- the athlete will only be able to sign a contract with another club if the contract in force has expired or is due to expire within six months (article 18); and
- third parties cannot influence in any aspect of the employment relationship between the clubs and the athletes, including transfer-related matters (article 18-bis).

Likewise, the CBF Regulation sets forth that during the last six months of the employment contract, a player is allowed to sign a pre-contract with another team, provided that the current team is notified in advance (article 25). In such case, the new contract is valid and enforceable, but it will only be effective upon the expiration of the term of the current contract.

Also, when the player terminates the relation with the original club before the end of their contract, both the player and the new team are liable for the payment of an indemnification (article 28 of the Pelé Law). In practice, the latter usually pays it. With regard to national transfers, the contractual indemnification is limited to 2,000 times the monthly compensation paid by the former team. There is no limitation to international transfers (article 28, paragraph 1).

For sports other than football, termination is ruled by the Pelé Law and by the same provisions of the Labour Law, which are applicable to employment relations in general.

### Ending contractual obligations

30 | Can individuals buy their way out of their contractual obligations to professional sports clubs?

Yes, individuals can terminate the relation with professional sports clubs before the end of the current contract, so a new contract can be signed with another team. In such cases, an indemnification is due to the previous club, as explained in 'Transfers'.

An indemnification is also due if the athlete quits playing for retirement purposes but then gets back to football within 30 months of the supposed retirement (article 28, item I, b of the Pelé Law).

### Welfare obligations

31 | What are the key athlete welfare obligations for employers?

According to the Pelé Law, the employer must (i) provide the athletes with the necessary conditions to take part in the sports competitions, training sessions and other preparatory or instrumental activities; and (ii) submit the athletes to medical and clinical exams required for the practice (article 34, items II and III). Clubs are also required to hire life and personal accidents insurances to cover risks to which athletes are subject in their professional undertakings (article 45).



## Young athletes

### 32 | Are there restrictions on the employment and transfer of young athletes?

The Federal Constitution sets forth that working is forbidden for individuals under 16, except if they are hired as apprentices, which is admitted if they are over 14 (article 7, item XXXIII).

The Pelé Law prohibits the professional practice of sports by minors who are under 16 (article 44, item III). However, individuals aged between 14 and 20 can be considered non-professional athletes in formation. For them, a formal contract is executed by means of which they shall be entitled to a financial allowance (article 29, paragraph 4). Such contract does not constitute an employment relationship.

The restrictions to international transfer of young athletes provided for the RSTP are applicable in Brazil (article 46 of the CBF Regulation). Therefore, athletes under 18 cannot be transferred (article 19, item 1 of the RSTP). Exceptions are made if the parents of the athlete have moved to the country for reasons not related to practising football or if the athlete lives in a border region (article 19, item II, a and c).

### 33 | What are the key child protection rules and safeguarding considerations?

The Federal Constitution is the most relevant legislative act that provides for children's rights. It determines that it is the duty of the family, as well as of the society and state, to ensure children's protection (article 227). Also, the Children and Adolescent Statute (Law No. 8,069/1990) is the specific Brazilian statutory law protecting children, including the inviolability of their physical, psychological and moral integrity (article 17).

In case of a violation of a disciplinary rule, athletes under 14 years old will not be deemed liable; instead, they will be submitted to educational help (article 162 of the Brazilian Sports Code). If the violation is performed by an athlete under 18, his or her age will be considered as a mitigating factor when applying the penalty (article 180, item I).

Under the Brazilian Sports Code, any athlete younger than 18 is entitled to have defendants nominated to advocate for his or her interests (article 31).

## Club and country representation

### 34 | What employment relationship issues arise when athletes represent both club and country?

The conditions and matters regarding an athlete representing both club and country shall be defined by an agreement between such entities (article 41 of the Pelé Law).

With regard to football players, the entity that calls the athlete up must indemnify the employer for the period during which the individual is at the national team's disposal (article 41, first paragraph). For sports other than football, this indemnification is optional (article 94).

## Selection and eligibility

### 35 | How are selection and eligibility disputes dealt with by national bodies?

The criteria for selection and eligibility of athletes are determined by each sport's confederation. It varies from individual to group sports. The first category normally requires that the athletes have achieved certain accomplishments throughout their careers, like speed records in sports such as swimming or athletics, and ranking positions in others. In group sports, the eligibility relies on the athletes' professional skills at the sole discretion of the coach.

## TAXATION

### Key issues

### 36 | What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Brazil imposes worldwide taxation on the basis of residency (rather than citizenship or nationality). Accordingly, resident individuals are taxed on a worldwide basis on their income and gains arising both in Brazil and abroad. Non-resident individuals are only subject to taxation in Brazil if they receive income from a Brazilian source.

Thus, assuming the athletes travelling to compete in Brazil are not Brazilian residents, they should not be subject to income taxation in Brazil on their salaries, image rights, arena rights and any other sort of compensation received from foreign sources. Such athletes would only be subject to Brazilian taxation if they receive payments from Brazilian sources.

Service compensation paid, credited, delivered, employed or remitted by a Brazilian source to or in favour of the non-resident athlete is subject to: (i) the withholding income tax (IRRF) at a 25 per cent rate, owed by the athlete, which must be withheld and collected by the Brazilian paying party (article 746 of Decree No. 9,580/2018 – the Brazilian Income Tax Regulations; (ii) the municipal services tax (ISS), at a rate of up to 5 per cent, owed by the athlete, which should be withheld and collected by the Brazilian paying party – actual ISS rates vary according to the municipality where the services are rendered or where the service importer is located (article 1, paragraph 1, and article 6, paragraph 2, item I, of Federal Complementary Law No. 116/2003; and (iii) contributions to the Social Integration Program and to Social Security Financing (PIS and Cofins), at a total combined rate of 9.25 per cent, owed by the Brazilian paying party. Services imported from overseas are subject to PIS/Cofins when provided by individuals or legal entities resident or domiciled abroad, either executed in Brazil or executed overseas, where the results are verified in Brazil (article 1, paragraph 1, of Law No. 10,865/2004). Any foreign currency exchange transactions entered into in connection with remittances of such compensation overseas would also be subject to the tax on financial transactions (IOF) at a rate of 0.38 per cent, owed by the Brazilian paying party (article 15-B, caption, and article 12, of Decree No. 6,306/2007, as amended – IOF Regulations). Because of the form of calculation of these taxes, their effective tax burden totals approximately 41 per cent. If the financial burden of IRRF or ISS is contractually transferred to the Brazilian paying party, the calculation basis of these taxes must be grossed up and the effective tax burden increases to approximately 59 per cent in total.

Prizes earned in local competitions by non-resident athletes are also subject to IRRF at a 15 per cent rate, unless the athlete resides in a favoured tax jurisdiction (as defined by Brazilian legislation), in which case IRRF would be levied at a 25 per cent rate (article 744, item II of the Brazilian Income Tax Regulations). The Brazilian Federal Revenue Service considers that only prizes paid with no connection to the athletes' performance would be subject to IRRF at the reduced 15 per cent rate (Resolution of Conflict Ruling No. 9/2012). If the prize is connected to or dependent upon the athletes' performance, it should be treated as service compensation and thus be subject to IRRF at a 25 per cent rate (the other taxes referred to in the previous paragraph could also be charged in this situation, although not addressed in this specific ruling).

Also, any amounts paid, credited, delivered, employed or remitted as compensation for the exploitation of the athletes' image rights are subject to IRRF at a 15 per cent rate (article 766 of the Brazilian Income Tax Regulations).

Any specific provisions of applicable double taxation treaties regarding IRRF would prevail and should be considered, including reduced IRRF rates and tax credits available in the athletes' country of residence for IRRF paid in Brazil.

**UPDATE AND TRENDS****Hot topics**

37 | Are there any emerging trends or hot topics in your jurisdiction?

There are many sports-related bills of law being currently discussed by the Brazilian Congress. The most relevant of these are: (i) Bill of Law No. 383/2017 that provides for regulation on electronic games; (ii) Bill of Law No. 1019/2019 that regulates the activities of collecting guns, shooting and hunting; (iii) Bill of Law No. 2758/2019 that regulates professional football, by giving it a specific law; and (iv) Bill of Law No. 1509/2019 that aims to guarantee resources to support women's football.

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