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Covid-19
5 legal challenges
facing the sports
industry in Spain

Report

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The Sports Industry in Spain vs Covid-19

How to win the match against Coronavirus? Challenges and opportunities

Covid-19 is having an enormous social and economic impact, a fact the sports industry is not immune. Regardless of the sport, the country or the magnitude of the sport competition, the last two months have seen a continuous trickle of temporary postponements or definitive cancellations of leagues, competitions and other events.

In what state has the pandemic left the sports industry in Spain? What are the legal questions that flow from this? What legal instruments does Spain have to mitigate the situation? What is the legal position of key stakeholders in this industry, particularly, sponsors and broadcasters? And are there opportunities in this scenario? In summary, **what challenges does Covid-19 present for the Spanish sports industry and how do we best deal them?**

The consequences of the Covid-19 crisis in the sports industry have captured a lot of media interest in the last weeks. Herebelow we answer five legal points that are particularly relevant to the short and medium-term on the future of the sports industry due to their economic significance.

1. What is the status of contracts for professional team sportsmen and women?

Like any other entity, sports clubs and/or Limited Liability Sports Company's (in Spanish "Sociedad Anonima Deportiva or "S.A.D.") **can take advantage of the temporary employment regulation proceedings (ERTEs) implemented for reasons of force majeure** that are set out in Royal Decree-Law 8/2020 of 17 March (RDL 8/2020). In brief, the ERTE procedures allows employers (including Clubs and SADs) to either suspend employment contracts on temporary basis, or a reduction of the employees' salary by reducing the hours of work. It should not be forgotten that these entities as well as professional sportsmen and sportswomen are subject to the same labour regulations. For this reason, this report does not question the fact that clubs or S.A.D. can apply to the ERTE due to force majeure.

One interesting point to note is that the position of certain sports federations, such as the Royal Spanish Football Federation (RFEF) would prefer football clubs or S.A.D. not go down this route but to reconsider other alternatives, such as an own package of social and economic measures presented by the RFEF. However, this position is unrealistic and perhaps unfortunate, especially as the RFEF is an entity that has delegated administrative functions and whose main mission must be to ensure the promotion and maintenance of the sport of football in any way it can. It is worth remembering that a club or SAD is not only made up of sportsmen and women, but also of a large group of non-sporting workers who are vital for the day-to-day functioning and administration of such Club or SAD. Several clubs in the sports of football, basketball, roller hockey and handball, have in fact already taken advantage of the ERTE's measure. Those clubs and/or S.A.D. that have not yet applied an ERTE may still benefit from it and when they consider it necessary during the Covid-19 national state of emergency.

Another measure applied by the clubs or S.A.D. - at least in football and basketball - has been the **collective private agreements of salary reduction** with their professional players.



It is fair to acknowledge the common sense, social sensitivity and solidarity shown by the vast majority of football and basketball players in this country in reaching such agreements to support the financial viability of their employer, as well as to preserve the jobs of their non-sporting colleagues.

Once the first impact of Covid-19 on the contracts of professional sportsmen and women has been satisfactorily dealt with, the issue under legal debate has been the **validity and duration of those contracts that are due end on 30 June 2020** (which is the usual end-date foreseen in the contract). If competitions do resume, they are likely to end later than this date foreseen in the contract. One good point is that those clubs, SAD that have finalized collective agreements with their players have usually anticipated this and deal with it accordingly in the agreement.

On the other hand, it should be borne in mind that Royal Decree 8/2020 establishes that fixed term contracts that, because of Covid-19, cannot longer comply with their agreed purpose, will be suspended during the period of national state of emergency in Spain. Thus, **the situation of those clubs or S.A.D. that have applied an ERTE to their athletes whose contracts have a termination date set at "the end of the 2019/2020 season"** (i.e. with no express mention of 30 June) should **be analyzed** to determine whether those contracts would be automatically extended until the end of the competition beyond 30 June.

However, the extension of contracts beyond 30 June seems to present a "sport-administrative" issue in terms of the athlete's corresponding "sports licence", which will have been issued for the end of the regular season, i.e. until 30 June. This should not be an obstacle to the athlete's continuity beyond 30 June because the sports federation that granted the licence can and should modify and extend the term of the licence.

In short, two final points to sum up the situation: (i) **the rights of professional sportsmen and sportswomen as workers prevail over the integrity of the competitions in which they participate**. And, ii) **the circumstances caused by the coronavirus open up a world of possibilities that in the future** must be provided for contractually, regulating and administratively.

2. How are sports sponsorships affected?

Sports sponsorship is a sector that has not stopped growing in recent years. 2020 has been a strong blow at a global level and significant losses are expected for certain brands in the sector. Reports on sponsorship are mixed: some suggest that Covid-19 will not affect current sponsors as much as initially expected (and in fact will open the door to new sponsors); while others are far more pessimistic.

To date, companies sponsoring clubs or sports competitions in Spain have acted patiently and quietly in claiming reductions or refunds of sponsorship fees from their sponsored counterparties. However, it is only a matter of time - as is already the case in the United States, England, Germany or Italy - before several of these sponsors make demands for reduction or refund of sponsorship fees by reference either to their contract or domestic laws. In Spain, Spanish civil law offers **mechanisms to request amendments to the terms of the contract, which could range from the moderation of the sponsorship fee to even the early termination of the sponsorship contract by the sponsor**.

When sports events are postponed or temporally suspended, sponsors -either of a club, event or athlete- lose the exposure that they have bargained for, which effectively frustrates the purpose of the contract. It should be forgotten that **sports sponsorship is**



much more than brand visibility, as the cancellation of events or their hosting without an audience affects the sponsorship itself, as there is a loss of direct fan engagement.

Although there are ways to keep sports sponsorship activated these days thanks to technology and social networks, the return on investment in sports sponsorship (the so-called "ROI") decreases. As an example, several sponsors use sports sponsorship as a tool to build customer loyalty or to attract new customers, actions that disappear completely in the current scenario and will most likely remain inactive both in the short and medium-term as we experience the full fallout of the Covid-19.

In sponsorship contracts, force majeure clauses and compromise solutions for both parties are usually established. **In the contract, both parties "play on the same team", and are looking for a win-win relationship, and so therefore the most sensible and beneficial for them is to reach an agreement on how to best forward.** Therefore, despite the negative impact that Covid-19 has in the short term for sponsor and sponsored counterparty, it is advisable for both parties to analyze their contract, the sponsorship situation and to make a mutual decision based on the aligned strategy for the medium-long term.

In the case of sports events postponed until 2021, it would be best to agree - if not already provided for by contract - on an **automatic extension of the rights and obligations of the sponsorship contract until a date later than the date of the event.** It is very likely that both the sponsor and the sponsored party will already have made significant investments in the relationship and breaking the arrangement now would only entail a loss for both parties. From a strict contractual perspective, any new extension scenario must be well documented in order to avoid possible claims in case of failure to meet expectations.

3. How should broadcasting rights be approached?

It is clear to everyone that television revenues are a fundamental pillar of professional sport, and the sports industry in Spain is no stranger to this. From a sports industry perspective, particularly those competitions/tournaments where TV rights are the major source of revenue, the general feeling is that "the current season must be finished no matter what", not only for sporting reasons (promotions, relegations, qualification for future competitions) but above all for purely economic reasons.

Television and/or audiovisual rights contracts usually establish payment calendars, with the first payment to be made before the start of the season and the remaining payments upon compliance of certain agreed milestones during the season. Therefore, **in most professional competitions there are still payments to be met.** As the competitions are now suspended, these will not be paid until they are resumed or at least, if payment is claimed, the broadcaster has cause to withhold it.

Generally, television rights contracts include force majeure clauses and even in the case of major sporting events or competitions, causes for suspension or cancellation are already provided for. Contrary to what public opinion may perceive, TV/media companies and/or platforms that bid for such audio-visual rights are few and far between and are very limited by the economic volume of these contracts, not to mention that the sale of these rights is established in a medium-long-term. For all these reasons, **there seems little point in starting an adversarial lawsuit, since it would be counterproductive to try to collect payments now and risk breaking the relationship altogether.** The key is to find a balance.



In conclusion, in the short-term, broadcasting rights contracts are likely to be renegotiated (perhaps more than once), and it is likely that TV fees will be reduced, or the term or rights will be re-evaluated, as **cash constraints hit home on broadcasters too.**

4. Will the situation present opportunities to invest in the Sports Industry?

It is anticipated that several clubs or S.A.D.'s across the professional leagues will struggle economically to maintain their financial structure and thus their level of competition. Although both international federations (like FIFA) and national federations (e.g. RFEF) have announced financial support for their members, so far almost everything remains in the proposal stage. While we hope the proposals soon be finalized, it is almost certain that this relief schemes will not be enough to completely alleviate the delicate economic situation in which several clubs or S.A.D.'s in Spain may find themselves.

As a result of the anomalous economic situation that Covid-19 will leave to the clubs, it is almost inevitable that some sports clubs will become insolvent -that is, they will not be able to meet their main payment obligations as they fall due, including the salaries of their players-. For this reason, the club's owners are likely to seek financing from the capital markets, opening the door to new investors or even owners (sale of club). Those who do not succeed in their financing or sales campaign will be forced into an insolvency proceedings in the medium term. In fact, **Spain already experienced** one "boom" in insolvency proceedings **in football** between 2008 and 2014, when more than 20 insolvency proceedings were reported. This led to **a change in the shareholder structure of many S.A.Ds.** Hence, **it is not a stretch to suppose that similar consequences may occur in the medium term after Covid-19.**

In addition to football and other team sports, **Spain has a large number of sports facilities and/or properties** (including golf courses, tennis academies, paddle courts, sports arenas, circuits/tracks, football academies, etc.). Due to their privileged geographical location and climate, these **are attractive investment properties**, mainly for foreigners. In addition, owners and/or right-holders of sports events in Spain may consider going out into the foreign market to attract investment for their competitions.

In sum, **the main challenge facing the sports industry in Spain will be to ensure that it can facilitate the entry of new "players" and new capital into the market** in order to create a stronger and more robust industry.

5. What does this period of confinement mean for esports?

Where some have a serious problem to survive, such as traditional sport, the esports sector has a **great opportunity to continue its growth trajectory.** Yet despite its digital advantages, it should be noted that Covid-19 has also stopped its competitions with a live audience. Thus, there are many more potential spectators online, through the different digital *streaming* platforms, but professional events have been reduced. This is an opportunity to promote competitions held from home or to bring this world closer to the reality of sports, carrying out campaigns like the recent ones, of LaLiga players playing FIFA in a charity tournament or NBA players doing the same with the 2K game of basketball and broadcasting some of these duels even on TV (ESPN in the United States). Some of the Moto GP riders also ran the first-ever virtual Mto GP Race. The Coronavirus affectation is temporary and initiatives like the ones mentioned above, serve to keep the flame in the fans.



As an example, sports betting companies that have suffered a significant drop in income due to the cancellation or suspension of sports competitions (football, basketball, tennis, golf, Moto GP, F1, etc.), in their search for alternatives, are making greater agreements and/or collaborations within e-sports, in these times in which the consumption of internet, online games and video games is the order of the day.

On a legal level, this situation **is an opportunity to professionalize even more from a merely legal and contractual perspective this industry, as well as to legally advise the entrance and investment of stakeholders of traditional sports and brands on the esports ecosystem.**

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