

Sports Arbitration: A Peculiar Beast



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Introduction

Ever-increasing public and private sector investment into the Middle Eastern sports market, through high-profile sponsorship deals, investment in sporting properties and successful bids for major events, continues to transform the region into a major player in the global sports industry. Having a legal infrastructure that underpins such initiatives, particularly in relation to the resolution of disputes, is crucial to safeguard their long-term sustainability.

In broad terms, sports disputes tend to fall into two categories: commercial disputes; and disputes of a disciplinary nature. The former covers disputes relating to the execution of commercial contracts, such as those relating to player transfers, broadcasting rights, sponsorship rights or the staging of sporting events. The latter covers alleged breaches of a particular governing body's regulations designed to protect, amongst other things, the integrity of its sport, such as doping and match fixing.

In the UAE, as well as in many other GCC countries and in line with international practice, sports disputes are routinely referred to arbitration.

The relevant contract and/or governing body's regulations will generally determine the appropriate forum for disputes to be resolved. Ordinarily, first instance disciplinary decisions are handed down by a non-arbitral dispute resolution chamber of the relevant governing body, usually with a right to appeal such decisions to an arbitral body either internally (i.e., an arbitral body set up by the governing body), nationally (e.g., a national sports arbitration centre) or internationally (e.g., the Court of Arbitration for Sport).

This article provides an overview of the internal, national and international sports arbitral bodies relevant in the UAE context, and goes on to consider some of the key differences between sports arbitration and commercial arbitration that underscore the need for bespoke sports arbitral bodies both locally and internationally.

Sports Arbitral Bodies

The Internal Dimension - Case Study: UAEFA Arbitration Committee

The Arbitration Committee of the UAE Football Association ('UAEFA') is a typical example of how certain UAE sports federations have established arbitral bodies to resolve certain disputes between stakeholders in their sports.

In accordance with FIFA's Statutes, the UAEFA Statutes contain a general prohibition on stakeholders (UAEFA members, players, officials, agents etc.) taking their disputes to local courts, unless specifically provided for in the UAEFA Statutes or FIFA Regulations. Instead, domestic disputes should be referred to the UAEFA, and international disputes referred to the Asian Football Confederation ('AFC') or FIFA.

The UAEFA Statutes state that the UAEFA's Dispute Resolution Chamber has jurisdiction to hear domestic disputes between clubs and players relating to employment contracts (save for certain matters that should be heard by local courts pursuant to UAE public policy considerations), training compensation and solidarity payments, with appeals being heard by the UAEFA's Arbitration Committee. Furthermore, the UAEFA Arbitration Committee Regulations confirm that its jurisdiction extends to: (i) disputes between parties who have agreed to submit their dispute to the Arbitration Committee; (ii) disputes between the UAEFA, its board, committees, members, players and/or intermediaries that do not fall under the jurisdiction of the UAEFA Judicial Bodies (comprising the Disciplinary Committee and Appeal Committee); (iii) cassation appeals against decisions of the UAEFA Judicial Bodies; and (iv) appeals against decisions of the UAEFA Player Status Committee. The UAEFA Statutes expressly exclude any jurisdiction on the part of the Court of Arbitration for Sport ('CAS') to examine any decision passed by the UAEFA Arbitration Committee. Hence, decisions rendered by the UAEFA Arbitration in respect of purely domestic disputes are final and there is no external right of appeal; it being noted that where the UAE's Federal Arbitration Law applies to the arbitration then its provisions, including its provisions in respect of setting aside an arbitral award, will apply.

The National Dimension

Given the special nature of sports dispute resolution and the requirement in certain sporting contexts to abide by specific international sports procedures, UAE legislators are mindful of the potential benefits of having a dedicated forum to resolve disputes in the sports sector. In 2013, the UAE Minister of Youth, Culture and Community Development formed a committee to draft the articles of association for a new UAE sports arbitration centre, prompted by a decision of the UAE National Olympic Committee that, *inter alia*, approved the formation of such an entity. A draft law creating a National Sports Arbitration Centre

('NSAC') has since been produced, which envisages the NSAC having jurisdiction to hear appeals challenging the decisions of UAE sports federations.

The draft law is yet to be promulgated and some UAE sports federations have made alternative interim arrangements either by expressly including a right of appeal to the CAS within their regulations or establishing their own internal arbitral body. The establishment of the NSAC remains a very attractive prospect and would help cement the UAE's status as a progressive sports market, following in the footsteps of the recently opened Saudi Sport Arbitration Centre ('SSAC').

The SSAC opened in 2016 and has its headquarters in Riyadh. It is an independent body established in accordance with the Olympic Charter, the CAS Rules and Regulations and the Saudi Law of Arbitration. It has exclusive jurisdiction to resolve sports-related disputes in the Kingdom of Saudi Arabia ('KSA'). Arbitration awards issued by the SSAC are final and not subject to appeal (unless otherwise stated in the Statutes of the SSAC or the relevant international federation). The applicable KSA arbitration law will determine what challenges, if any, an SSAC arbitral award may be subject to. The wide jurisdiction of the SSAC, and its range of specialised divisions (including, most notably, a specific football disputes division) is a laudable statement of intent and should help preserve the rights of sporting stakeholders and aid the broader development of the KSA sports sector.

The International Dimension - Court of Arbitration for Sport

The CAS, which is by far the best-known independent international sports arbitral tribunal, was established in 1984 in Lausanne, Switzerland on the initiative of the International Olympic Committee. It is an independent institution that facilitates the resolution of global sports-related disputes by arbitration or mediation, and has its own dedicated procedural rules that cater to the specific needs of the sporting world. Cases are heard by a sole arbitrator or a panel of three arbitrators, who the parties select from a closed pool of around 300 experts in sports law.

The CAS has three divisions. The Ordinary Arbitration Division determines first-instance disputes between sporting stakeholders that are generally commercial (rather than disciplinary) in nature. The Anti-Doping Division hears first-instance anti-doping cases. The Appeals Arbitration Division hears disputes arising from first-instance decisions made by sports governing bodies. In addition to providing Ordinary Arbitration, Anti-Doping and Appeal Arbitration services, the CAS also provides ad hoc expedited arbitration services at major sporting events, such as the FIFA World Cup and the Olympic Games.

Individuals and entities within the Gulf Cooperation Council ('GCC') sports sector have, for many years, submitted cases to the CAS and its role in providing a neutral, efficient and cost-effective mechanism to resolve sports disputes is well recognised across the GCC. Indeed, the Abu Dhabi Judicial Department entered into a partnership agreement with the International Council of Arbitration for Sport ('ICAS') in 2012 that paved the way for the opening of a CAS Alternative Hearing Centre in Abu Dhabi later that year, following in the footsteps of those opened in Sydney and New York. Such a development is recognition by ICAS that the region is a key growth market in professional sport, as demonstrated by the opening of Yas Marina F1 circuit in Abu Dhabi and the relocation of the International Cricket Council headquarters to Dubai, as well as the staging of major international sporting events including the 2022 FIFA World Cup Qatar, the FIFA Club World Cup, the AFC Asian Cup and numerous ATP tour tennis, European Tour golf and UCI cycling tour events. Crucially, it also affords local sporting stakeholders privileged access to the jurisdiction of CAS with concomitant time and cost efficiencies.

Unique Nature of Sports Arbitration

Sports arbitration has a number of features that make it different to standard commercial arbitration, such as:

1. **Public judgments** – many sports disciplinary cases result in a public judgment and sanction. Indeed, the CAS and many other national and international arbitral bodies often publish judgments on their websites to demonstrate to both the public and fellow athletes that justice is being done. This is in contrast to the strict confidentiality that ordinarily applies to commercial arbitration proceedings.
2. **Public hearings** – recent cases in the sports disciplinary context have emphasised the right to a fair hearing including, where desired by the athlete, the right to a public hearing. Part of the rationale for this is that public hearings reassure the public and fellow athletes as to the integrity of the proceedings and mitigate the potential for real or perceived bias, negligence or corruption in private proceedings. This is in contrast to commercial arbitration where it is usual for hearings to be held in private.
3. **Standardised penalties** – many sports governing bodies operate a tariff system for decision-makers to refer to when sanctioning athletes for disciplinary offences, for example in the context of anti-doping. The rationale for this is that sports disciplinary panels should not apply wholly inconsistent sanctions to similar offences. As a result, the outcome of certain sports arbitrations can be less discretionary than the outcome of commercial arbitrations.
4. **Lex Sportiva** – a body of sports law jurisprudence has developed over the years that, inter alia, ensures the fundamental principles of fairness and proportionality are borne in mind by decision-makers. Since sports arbitral awards are often public, sports arbitrators routinely refer to, and rely upon, the decisions of other arbitrators and governing bodies in analogous disciplinary cases which, whilst not binding in nature, are highly persuasive. This promotes consistency of decisions and reassures sporting stakeholders that analogous cases will be treated similarly. This contrasts with commercial arbitration where arbitral decisions are often confidential and not routinely available to guide subsequent arbitrators.
5. **Expedited proceedings** – sports governing bodies and ad hoc CAS tribunals routinely hand down decisions within 24 hours when required by the demands of sporting competition timetables e.g. when a footballer receives a red card and seeks to challenge his/her suspension for the next match which is only 48 hours hence. Although it is open to the parties to commercial arbitrations to agree the procedures that will apply to their dispute, including expedited proceedings, and although the rules of many commercial arbitration institutions provide for the same, it is rare for commercial arbitrations to be conducted with the level of expedition as many sports arbitrations.
6. **Interim measures and enforcement** – generally speaking interim measures are often more effective in the sporting context than general commercial arbitration, as sports governing bodies invariably comply with such orders (and arbitral awards) and have very effective and direct means of ensuring that their members do likewise (e.g. preventing them from taking part in a tournament). As a consequence, they are routinely sought to address issues discrete to sporting competition, such as provisional suspensions and transfer bans pending the conclusion of proceedings. The system of enforcement of interim measures (and arbitral awards) in standard commercial arbitrations is less predictable and may necessitate the additional time and expense of going to local courts.
7. **Closed list of arbitrators** – it is often the case in the sporting context (e.g. CAS arbitrations) that the parties may only nominate an arbitrator from a closed list of potential candidates. This restrictive system is justified on the basis that it ensures that sports law specialists determine such disputes. This is in contrast to standard commercial arbitration, where parties often have freedom to nominate an arbitrator of their choosing.
8. **Consistent legal seat** – the legal seat of all CAS arbitral proceedings, regardless of the venue of the hearing, is Lausanne in Switzerland. Hence, all CAS arbitrations are subject to Swiss arbitration law and decisions are only challengeable (in very limited circumstances) before the Swiss Federal Tribunal. This is also the case with other key Swiss-headquartered sporting institutions, such as FIFA and the International Olympic Committee. This consistency of seat and therefore the applicable procedural law is not replicated in standard commercial arbitration, where parties generally have the freedom to

choose the seat of their arbitration.

As explored above, sports arbitration is a different beast to commercial arbitration. This is largely due to the overriding objective to facilitate consistency of decisions and public sanctioning, so as to uphold the integrity of sport in the eyes of fellow athletes and the general public. Consequently, bespoke arbitral bodies – on an internal, national or international level – are necessary in order to administer justice in the unique context of sport. Such bodies are efficient in terms of cost and time and help promote consistency in decision-making, which in turn reassures investors that the region's sports market is mature, predictable and worthy of investment.

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