

Kuwait's return to the IOC: overview of sports law in Kuwait

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Introduction

The State of Kuwait has a longstanding history in sports activity and is one of the few countries within the Gulf Cooperation Council to implement a legal framework specifically to regulate the operation of sports activities and the functioning of sports entities, including the regulation of sports federations, the Olympic committee and sports clubs.

Before enacting the current sports law No. (87) of 2017 ('Sports Law'), sports activities in Kuwait were primarily regulated by the repealed Law No. (42) of 1978 regarding Sports Entities. The repealed law was subject to criticism by the International Olympic Committee ('IOC') because, contrary to the international Olympic Charter, it did not achieve complete independence for sports activity in Kuwait. More specifically, the criticism suggested the repealed law did not protect against governmental interference in the internal functions of the Kuwaiti National Olympic Committee ('KNOC'). As a result of such criticism, KNOC was suspended by the IOC in 1986 and Kuwaiti national athletes were not permitted to participate in international Olympic games as representatives of the State of Kuwait, albeit they were permitted to participate as independent athletes under the flag of the IOC. Kuwait's relationship with the IOC has gone through some ups and downs and whilst Kuwaiti athletes were sometimes allowed to participate in international Olympic games as official athletes of Kuwait, at other times the IOC banned official participation of Kuwaiti athletes.

Enactment of the new law

In order to put an end to the debate as to the compliance of Kuwaiti laws with international standards of sports law, the Kuwait Parliament. in 2016. voted by a majority of over two-thirds to amend the then applicable sports law to facilitate dialogue with the international sports community and to refute claims that Kuwait was not in compliance with its international commitments.

On 4 December 2017, the Kuwait Parliament enacted the Sports Law to facilitate the restructuring of the Kuwaiti sports community, including sports federations, election procedures for sports club boards and to provide internal bylaws for sports clubs as well as to eliminate any perception of governmental interference in the internal functions of the KNOC.

Compliance with international standards

1. Establishments of sports entities

Most of the provisions of the Sports Law emphasise the importance of achieving compliance with international standards for sports legislation. Article (2) of the Sports Law expressly provides "Sports entities shall be established in accordance with the related international standards through their

registration with the authority [Public Authority of Sports] and promulgation as per the law.” Sports entities, as enshrined under Article (2), means all entities concerned with sports activities in Kuwait; namely, general and specialised sports clubs, sports federations, the KNOC and the Kuwait Paralympics Committee (‘Sports Entities’). Article (2) of the Sports Law eliminates governmental interference in the constitution or establishment of Sports Entities to ensure their independent functioning, free from any executive or governmental interference.

2. Independent bylaws and juristic personality

Internal bylaws are an integral part of managing any institution/entity. To achieve the aimed independence of Sports Entities and adherence to acceptable standards of international sports legislation, Article (3) of the Sports Law permits Sports Entities to adopt their own bylaws provided that they are in line with related international standards, the Olympic Charter and prevailing bylaws of relevant national and international federations. Article (3) mandates inclusion in the bylaws of such information as the name of the entity, its address, activity, membership conditions, board election procedures, financial resources, and member meetings. Moreover, Article (5) eliminates any control of Kuwaiti national authorities with respect to the recognition of the bylaws or any amendments thereto. Article (5) grants Sports Entities the right to ratify and amend their bylaws via the concerned international federation, which eliminates any governmental discretionary power in this area. In addition to a Sports Entity’s right to adopt its own bylaws, Article (11) grants each Sports Entity an independent legal personality, separate from the legal personality of its members. Independent legal personality entitles Sports Entities the right to conclude legal acts such as contracts, and it also gives them the right to sue and be sued independently from their members, which achieves a balanced relationship between the Sports Entity and its members and promotes a proactive role for members rather than a passive one.

3. Handling funds and audit rights

Further to the primary theme on the independence of Sports Entities, Article (21) of the Sports Law prohibits any current or exiting member of a Sports Entity from individually owning or seizing any funds that are privately owned by the Sports Entity. Moreover, a Sports Entity, as an independent juristic person, is not permitted to engage in any betting activities or to intentionally conclude any act that could prejudice its financial credibility or expose it to financial damage. Article (22) authorises Sports Entities to deposit funds in one or more bank account(s) in Kuwait, provided that a notification is sent to the Kuwait General Sports Authority. Article (23) permits Sports Entities to accept governmental donations and subsidies as well as allowing them to exploit premises and real estate owned by the government, subject to agreement between the concerned Sports Entity and the Kuwait General Sports Authority. In this respect, and given that governmental subsidies and premises are public assets, Article (23) also authorises the Kuwait General Sports Authority to audit and review the allocation of such funds to ensure they are allocated within the scope of their legitimate and agreed-upon purposes. The Sports Law limits the scope of such an audit to a review of accounts related to the government subsidies or donations so that the audit right does not extend to include all financial activity of the concerned Sports Entity.

Sports clubs

1. Definition

A sports club is defined by Article (24) of the Sports Law as a sports entity that enjoys an independent legal personality, which aims to exercise a sporting activity, facilitate and provide the necessary means and services to achieve its purposes for the benefit of all its members in all social, cultural and health fields.

2. Management

Sports clubs are managed by their general assembly, which is the superior authority of the club. A general assembly shall exercise the powers and authorities conferred upon it by the relevant club bylaws with complete independence to ensure every member's right to freely contribute to the decision-making process of the club without intervention from any third party. For reasons of efficiency, the general assembly elects a board of directors to run the day-to-day affairs of the club.

3. Joint liability of board of directors

Whereas the board of directors is responsible for the daily affairs of a sports club, Article (30) of the Sports Law makes all members of the board jointly liable to fulfil the financial obligations of the club in case the exercise of such obligations results in a violation of the Sports Law and/or the bylaws of the club. In addition, the said Article (30) makes former members of the board (i.e., members who have finished their terms and are no longer current members of the board) liable to settle any violations that occurred during their term on the club's board. These rules are provided to ensure efficient, conflict-free and accountable management of the board of directors of sports clubs.

National sports federations

1. Definition

A National Sports Federation is defined, by Article (34) of the Sports Law, as a Sports Entity that enjoys an independent juristic legal personality and is recognised by the concerned international federation. The membership of a National Sports Federation is composed of those sports clubs and other entities which exercise the concerned activity regulated by the federation. Each National Sports Federation is managed by its general assembly, which is the superior authority of the federation. The Sports Law also enshrines the principle that no more than one National Sports Federation can be established for the same sport.

2. Authorities of a national sports federation

According to Article (35) of the Sports Law, a National Sports Federation shall exercise the authorities conferred upon its bylaws. In particular, a National Sports Federation shall exercise the following authorities:

1. planning general policy to ensure the spread of the sport throughout the country;
2. managing technical, organisational and financial aspects of the concerned sport;
3. preparing national teams which represent the country in Olympic, international; continental, Arabic and Paralympic tournaments and competitions;
4. co-ordinating efforts of its members and establishing relevant programmes for international matches; and
5. putting in place relevant regulations and rules for registering players and governing player movement between teams, whether domestically or internationally.

Kuwait national Olympic committee ('KNOC')

As defined under Article (38) of the Sports Law, the KNOC is a Sports Entity that enjoys independent legal personality and it aims to support, develop and sponsor the Olympic movement in the country as per the rules of the Olympic Charter. The general assembly of the KNOC is the superior authority of the KNOC and it exercises its powers with complete independence in light of the KNOC's bylaws as approved by the IOC.

The KNOC exclusively represents Kuwait in Olympic games and related sports competitions organised by the IOC on regional, continental or international levels. No other Sports Entity or body may use the same name, slogan or marks of the KNOC without obtaining the prior approval of the KNOC.

Kuwait Paralympic committee ('KPC')

Article (41) of the Sports Law defines the KPC as an independent Sports Entity that enjoys independent legal personality and is recognised by the International Paralympic Committee. The KPC aims to support, develop and sponsor the Paralympic movement in the country as per the rules of the Paralympic Charter. The general assembly of the KPC is the superior authority of the KPC and it exercises its powers with complete independence in light of the KPC's bylaws as approved by the International Paralympic Committee.

The KPC exclusively represents Kuwait in Paralympic games and related sports competitions organised by the International Paralympic Committee on regional, continental or international levels. No other Sports Entity or body may use the same name, slogan or marks of the KPC without obtaining the prior approval of the KPC.

Dispute resolution

1. Establishment of the national arbitral tribunal

The Sports Law provides, under Article (44), for the establishment of an independent national sports arbitral tribunal ('National Arbitral Tribunal') to settle sports related disputes in Kuwait, provides that: (1) the subject matter of the dispute is related to sports; and (2) one of the parties to the dispute is a Sports Entity or a member of a Sports Entity. Article (44) also states that the resolution of dispute by the National Arbitral Tribunal shall be through either mediation, conciliation or arbitration.

2. Board of directors

Article (46) of the Sports Law provides that the National Arbitral Tribunal shall have a board of directors which is composed of the following:

1. four) judges to be delegated from either the Court of Appeal or the Court of Cassation; and/or
2. three Kuwaiti nationals who have either a sports background or legal experience, and who are to be selected from the general assembly of KNO

3. Finality and enforcement of arbitral awards

Article (49) of the Sports Law provides for the finality and obligatory nature of the arbitral awards rendered by the National Arbitral Tribunal upon the award being signed by the chairman of the board of directors and served upon the relevant parties. The same Article (49) provides that the enforcement of arbitral awards shall be subject to the arbitration provisions enshrined under Law No. (38) of 1980 regarding the Code of Civil and Commercial Procedures Law.

It is worth noting that the Sports Law does not provide for the parties' right to appeal/ challenge the arbitral award, however, it does provide for the parties' right to resort to the Court of Arbitration for Sports ('CAS') at any stage in accordance with CAS's applicable rules and procedures.

Conclusion

While the Sports Law represents a significant step forward in regulating the main foundations of the Kuwait sports community, it does not regulate in significant detail some other important aspects of the sports industry. These areas include, but are not limited to, fan conduct, the management and organisation of sports events and guidelines for investment in the sports sector. Promulgation of the Sports Law was a positive and necessary step to put an end to criticisms regarding the independence of Sports Entities in Kuwait. however, further beneficial steps could be taken through supplementary regulations or amendments to better position the Sports Law to address broader practical concerns in a potentially, promising industry.

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