

ITALY

Law and Practice

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1. Regulatory

1.1 Anti-doping

Doping as a Criminal Offence

Doping is a crime under Article 586-bis of the Italian Criminal Code, punishable by imprisonment of up to three years and a fine up to EUR51,645 for anyone who:

- procures, administers, takes or promotes the use of forbidden drugs or biologically or pharmacologically active substances; or
- adopts forbidden medical practices.

These sanctions are imposed if the above-mentioned acts are not justified by pathological conditions and are aimed at altering athletes' features, competitive performance, or changing the results of doping tests. To commit the offence, it is only necessary to prove the ability of the substance or practice to unlawfully enhance the athlete's performance.

Trade of forbidden drugs and pharmacologically or biologically active substances is sanctioned with imprisonment up to six years and a fine up to EUR77,468 (Article 586-bis, paragraph 7 of the Italian Criminal Code). Sanctions may be increased under specific circumstances (eg, if the conduct causes harm to health or is per-

petrated by an agent or employee of a sports entity) and doctors and sports persons involved in the criminal conduct are subject to disciplinary sanctions as well (Article 586-bis, paragraphs 4-5).

Prohibited Substances and Medical Practices

Prohibited substances and medical practices are periodically updated by a Decree issued by the Ministry of Health. Annex I and Annex III, Section I, of the latest Ministerial Decree divide prohibited substances into three categories:

- prohibited substances and methods both in and out of a competition (eg, nandrolone, Erythropoietins);
- prohibited substances and methods only in a competition (eg, cocaine, ephedrine, tetrahydrocannabinol); and
- prohibited substances and methods only in certain sports.

The National Anti-Doping Organisation (NADO Italia)

NADO Italia is acknowledged by the World Anti-Doping Agency as the competent entity on anti-doping in Italian sports, and some of its main duties are:

- issuing the Sports Anti-Doping Regulations (eg, the “Sports Anti-Doping Code” and the “Technical Document for Testing and Investigation”);
- planning and managing anti-doping tests and the relative results;
- investigating on potential anti-doping violations (through the National Anti-Doping Prosecutor’s Office) and imposing sanctions in case of breach of anti-doping norms (through the National Anti-Doping Tribunal);
- creating educational programmes and courses to raise awareness on anti-doping matters; and
- managing therapeutic use exemptions requests.

The World Anti-doping Code is implemented through the “Sports Anti-Doping Code” issued by NADO Italia, which transposes the World Anti-Doping Code within the Italian sports system and applies to sports subjects - member or affiliate - under the authority of the Italian National Olympic Committee (CONI) and to non-members/non-affiliates (eg, doctors, pharmacists) whose conduct has an impact on CONI members/affiliates and competitions.

On the above, a noteworthy case concerns the ineligibility of former Italian racewalker Alex Schwazer; it is one of the most complex and significant anti-doping cases in Italian sports in recent history. It is also interesting since it proves the independence of sports justice from criminal justice, which may lead to different outcomes in the two contextual proceedings. The athlete indeed tested positive twice (in 2012 and 2016), but while for the first violation he received sanctions both on a disciplinary and criminal level, for the second violation the Italian Criminal Court acknowledged anomalies in the athlete’s sample and dismissed the proceeding against him for

“not committing the criminal conduct”, despite WADA’s objections. Due to this outcome, Schwazer applied to the Court of Arbitration for Sport (CAS) and the Swiss Federal Court requesting:

- the reconsideration of the ban; and
- the provisional suspension of the eight-year ban.

Both suspension requests were rejected by the courts. In 2022, Schwazer announced that he had applied to the European Court of Human Rights against the CAS and Swiss Federal Court decisions.

1.2 Integrity

Article 1 of Law no 401/1989 (“Fraud in sport competitions”) imposes sanctions of imprisonment from two to six years and a monetary fine on:

- individuals who offer, promise, or accept money or other advantages in relation to a participant in an official sport competition; or
- individuals who carry out any other act to manipulate fair and equitable competition.

To commit said offence, it is sufficient that the intention existed to “manipulate fair and equitable competition”, and the actual occurrence of the event is not required.

Sports fraud is also sanctioned by all the Italian Federations’ Sports Justice Regulations. For example, the Italian Football Association (FIGC) Justice Code punishes clubs, athletes and any other relevant subjects of the FIGC for any conduct aimed at:

- manipulating the course or the result of a match; or
- ensuring an unfair advantage in competition.

Sanctions may include points deductions, relegation, exclusion from the tournament and/or revocation of any sport title. Individuals are punished with a minimum four-year ban and hefty monetary fines. Sanctions can be strengthened in case of multiple offences, or if the manipulation of a result or a tournament advantage is obtained.

The “Calciopoli case” in 2006 was built upon said offences, since presidents and managers of some prestigious Italian football clubs, FIGC officials, executives of the Italian Referee Association and referees were investigated by the criminal Public Prosecutor for criminal association and fraud in sport competitions. Concurrently, the FIGC Prosecutor initiated investigations for violation of the FIGC Justice Code. Said investigation led to vast sanctions being imposed upon clubs, public officials and the most eminent persons working in the football industry at that time, including revocation of sport titles, relegation, points deduction and bans from public services and managerial roles. The liability of the defendants was also acknowledged as a crime in ordinary criminal courts; however, most defendants benefited from the statutes of limitations of the offences.

1.3 Betting

Gambling Under Italian Laws and Betting-Related Offences

Gambling business is legal only if operated by entities in possession of a specific licence issued by the Excises, Customs and Monopolies Agency (ADM). Outside this regulated area, gambling is a crime and the Criminal Code sanctions both organisers and participants to gambling (in particular, arrest and fines, Articles 718 and 720, Criminal Code).

Under sports law, specific betting-related offences are in force to fight betting and match-fixing. The FIGC Justice Code (Article 24) specifically forbids betting activities for individuals connected to the FIGC, managers, stakeholders and members of professional and non-professional clubs. In particular, members of professional clubs can never bet on official FIGC, UEFA and FIFA matches. Members of non-professional and youth clubs can bet through authorised betting agencies only on official FIGC, UEFA and FIFA matches not involving their own club. Sanctions include sport bans, monetary fines, points penalties, relegation, exclusion from the tournament and/or revocation of the title. Sanctions are also established for failing to report any potential betting-related offence to the FIGC Prosecutor. The same conduct is relevant under criminal law to the extent it constitutes a fraud in sports competition (see 1.2 Integrity).

A notable case involving both Criminal and Sport Justice concerns actions of match-fixing and gambling carried out in 2011 by players, coaches and club managers of primary football clubs. Charges were pressed by a football club against its former goalkeeper, who was accused of adding a sedative to his teammates’ water to sabotage their performance during a match in 2010. The player was then investigated for criminal association with the purpose of betting on fixed matches and the investigation has involved numerous players and coaches. After multiple disciplinary proceedings, sanctions have been imposed to several clubs (eg, points penalty and fines), players and coaches (in the most serious cases, five years of ineligibility and preclusion from permanence in any role or category within the FIGC).

Co-operation Against Gambling in Sports

In recent years, many sports institutions (eg, football and basketball leagues) undertook initiatives to prevent sports fraud and raise awareness on gambling and match-fixing in sports, such as education and training campaigns among athletes. In parallel with said initiatives, some leagues (eg, Lega Pro and the National Amateur League - LND) concluded memoranda of understanding with the ADM and international technology providers with the purposes of monitoring sports betting flows and preventing frauds.

With Decree Law no 87/2018, the government banned gambling and betting advertising in sports events despite criticism from clubs that have suffered economic damages due to the forced termination of numerous sponsorship agreements with international betting agencies.

1.4 Disciplinary Proceedings

The principle of independence of sports justice from ordinary justice is affirmed by Law Decree no 220/2003, with certain limited exclusions (eg, criminal conducts). Under the Law Decree, technical and disciplinary controversies are assigned exclusively to sports justice; therefore, clubs, associations, affiliates and members shall apply to disciplinary bodies under penalty of disciplinary sanctions.

Anti-doping/disciplinary proceedings generally start with a preliminary investigation led by the PNA/Federation Prosecutor, which may end either with a dismissal or with a disciplinary action against the suspect and the consequent referral, respectively, to the TNA or to the competent Federation Tribunal. Disciplinary proceedings may also start with an application by holders of protected interests.

Sports proceedings shall comply with the principles of fair trial and reasonable duration, with the aim to ensure the proper functioning of competitions and federation activities. Parties are granted the right to two levels of judgment and it is also possible to request provisional measures (eg, athlete's suspension, etc). During hearings the parties have the right to be personally heard in condition of equality with their counterparts, evidence can be admitted in various forms (eg, documents, witnesses, technical consultancy) and even ordered ex officio by the panel. The parties may be entitled to file clear and synthetic defensive memorials.

First instance decisions may be challenged before the National Anti-Doping Court of Appeal and the Federation Court of Appeal, while only disciplinary decisions may be further challenged before the CONI *Collegio di Garanzia dello Sport* for violation of law and for inadequate/defect of motivation on a decisive point of the dispute (Article 54, CONI Justice Code).

The above proceeding does not exclude the involvement of competent public prosecutors and ordinary criminal courts, which may initiate direct investigations, featuring a regulated flow of information between ordinary and sport judicial bodies.

2. Commercial Rights

2.1 Available Sports-Related Rights Merchandising

Sports entities are increasingly focusing on exclusive merchandise in order to further enlarge their fan base worldwide, attract new sponsors, gain visibility and, most importantly, increase their revenue with commercial activities. Many clubs are following said trend as they frequently

release special collections dedicated to specific markets (eg, the Chinese New Year collections), trendy lifestyle merchandise (capsule collection) and, predominantly, digital content to be marketed via NFTs or similar instruments. This triggers the need to protect the relevant intellectual property and gain consent from the creators, developers and interested subjects.

Ticketing

For the most important sports events, event organisers enter into partnerships with specialised ticketing companies and/or agencies, through which spectators have the opportunity to purchase tickets and, if allowed, change the user's data on tickets or resell them to third parties. To avoid drawback deriving from "secondary ticketing", in 2018 a Decree of the Ministry of Economics and Finance established certain preliminary identification requirements for tickets' purchasers as well as sanctions (including monetary sanctions, removal of illegal content and website blackout) for anybody using the so-called "bot" software to serially purchase multiple event tickets on the web.

Hospitality

Hospitality services are increasingly offered by sports events organisers as a reward to sponsors, investors, VIPs and loyal fans with the aim to increase brand awareness and attract new sponsors and investors. The pursuit of this additional source of income is boosting investments in sport venues and stadiums, with initiatives sponsored also by the leagues to fund investments in sport infrastructure.

2.2 Sponsorship

Sponsors remain a major source of income for the Italian sport industry. Italian laws do not contemplate statutory provisions governing sponsorship contracts; therefore, parties are granted

the utmost freedom to define the relevant terms and conditions. Sponsorship agreements often contemplate additional components like licensing, advertising and merchandising. Particular care should be provided when negotiating agreements with sponsors operating in certain industries (eg, alcoholic beverages and betting, where limitations are imposed on sponsorships with visibility in the Italian territory) and when a barter is provided (ie, payment in kind), where relevant tax implications must be assessed as well.

Often, sponsors are requesting clubs to use images of single athletes (in addition to images of the overall team) in their promotional campaigns; however, in such instances, while most clubs are entitled to grant rights over collective images, a specific consent should be obtained when a single athlete is involved.

Naming rights (whereby a club, a competition or a stadium/arena are renamed with the sponsor's name) may also be included, subject to certain limitations imposed by the relevant sport federations (for instance, in football it is possible for clubs to name their stadium after a sponsor, but not for sponsor to name a professional club, the latter being a typical feature of basketball or volleyball clubs).

High attention is also paid by leagues to help clubs enhance and promote their brand (for instance, recently the "Lega Serie A" opened to the addition of further sponsors on teams jerseys) and also sports events are linked to sponsors (eg, match sponsors, award sponsors and even technology sponsors), especially since betting sponsors have been banned by law resulting in clubs needing to replace these lost profits.

2.3 Broadcasting

Legislative Decree No 9/2008 (Melandri Law) marked the transition from a system based on the ownership of sports broadcasting rights by each event organiser (eg, in leagues, the home team), to a system based on co-ownership by competitions organisers and participating clubs, with the aim to ensure competitive balance among clubs (through a fairer distribution of revenues) and to achieve a transparent and efficient broadcasting rights market.

Pursuant to the above, competitions organisers are in charge of marketing broadcasting rights of said competitions worldwide, in the interest of the participating clubs.

Event organisers still maintain full rights to footage and audio of past events (shared with the visiting club), whereas mass media maintain the right to report and cover sport events, with limitations concerning live matches. Rights to footage and audio of past events may also be exploited for lucrative purposes by the respective holders, which may still retain the right to use them on their own platforms (eg, social media) for non-commercial and/or reporting purposes.

Specific guidelines govern the procedures to assign broadcasting rights to the best bidder in a transparent tender procedure (subject to approval by the Communications Guarantee Authority and the Antitrust Authority), as well as the maximum duration of licensing contracts and specific rules for the formation of so-called “broadcasting bundles”.

For instance, broadcasting rights of professional sports competitions are assigned over three seasons (but amendments to extend the maximum duration of the allocation to five seasons are in the approval process by the Parliament)

through a dedicated sale process of different “packs” (eg, matches, highlights, unencrypted broadcasting, radio etc). One single multimedia player may not exclusively obtain broadcasting rights for all matches.

The Melandri Law provides criteria for the distribution of broadcasting rights revenues among clubs participating in the relevant competitions and specific rules are designed for Serie A football clubs (including obligations to allocate a part of those revenues for the development of youth football, minor leagues and sports infrastructures).

In order to safeguard the investment of the assignee of the broadcasting rights and to fight piracy, the event can be filmed and broadcasted only by the assignee itself. The venue of the event can also be attended by journalists working for different broadcasting companies, but they cannot take any audio, video or pictures of the event for broadcasting purposes. They nevertheless maintain the right to narrate the event in pursuance with the right of reporting.

3. Sports Events

3.1 Relationships

Rights in a sport event (and pertaining obligations) are typically attributed to the organiser; however, said attribution may depend on multiple factors (eg, venue ownerships, any delegations to Leagues or Federations to sell the event broadcasting rights, etc).

In professional matches, the home team has the right to control spectator admission through ticketing and/or dedicated invitation. By purchasing tickets, spectators automatically accept the stadium regulations, the rules issued by the

federations, leagues and public security authorities, and any additional measures regarding the event.

On the multimedia side, broadcasting rights are not controlled by organisers in professional sports; however, they have the right to obtain revenues from broadcasting rights and to archive footage and audio of the event (see **2.3 Broadcasting**).

Sport events' organisers must request all necessary authorisations from the competent authority for public entertainment and obtain from the territorially competent police force a so-called public entertainment licence to allow the sale of tickets. In case of non-compliance, organisers may suffer sanctions and/or the revocation of the venue's practicability for the subsequent matches.

By way of example, in football said provisions are also provided by the FIGC in a specific Annex to the National Licensing Systems, which imposes specific minimum requirements, depending on the importance of the competition, to host events, such as:

- minimum number of seats;
- pitch conditions and maintenance;
- lighting system;
- locker rooms;
- disabled facilities; and
- broadcasting areas.

Besides, organisers are often required to enter into a liability insurance policy for damages incurred by third parties, and they shall also comply with the provisions imposed by their federation in terms of technical equipment suitability, athletes' health protection and safety for every person involved in the event.

3.2 Liability

Organisers Duty of Care

Organisers have the duty to verify the suitability of the venue for each event, making sure that safety measures are in place preventing any damage to attendees, athletes and third parties.

Failing the above, organisers may be held liable for breach of contract towards ticket-holders (Article 1228 of the Italian Civil Code) and under tort provisions (Article 2043 of the Italian Civil Code) for damage experienced by the attendees and their belongings during the event, triggering indemnification obligations.

In addition, organisers may be held liable as custodians of the venue (Article 2051 of the Italian Civil Code) and, on the occasion of major sport events, they share the same liability provided for those who carry out dangerous activity (Article 2050 of the Italian Civil Code).

The burden of proving exemption from liability is particularly steep, as organisers need to:

- prove the occurrence of a force majeure event; or
- have taken all the necessary measures to avoid damages.

Similarly, liability can be excluded when the damage is a consequence of a reasonably foreseeable risk deriving from the sport hosted in the venue (eg, an athlete/spectator hit by a ball).

Athletes are rarely held liable towards spectators, unless their actions fall outside the reasonably foreseeable risk deriving from sports activities or unless they are willingly intending to cause harm to a spectator.

With reference to organisers' limitation of liability, it is common to find on tickets or regulations accepted by spectators when purchasing tickets limitation of liability clauses establishing that organisers and their agents are not responsible under certain circumstances; however, under consumer protection provisions, said clauses are always void when limiting liability for death and injuries (Consumers' Code, Article 36.2).

Prevention of Violence and Disorder in Football

Organisers shall also ensure public order and co-operate with law enforcement agents before, during and after the event. Public authority is also entitled to suspend or cancel an event in case of riots, disturbance or danger to public safety. In addition, organisers are required to hire an adequate number of stewards in charge of ticket control, spectator reception and support to law enforcement officials during a match.

With specific regard to football, the FIGC Justice Code establishes strict liability on clubs for any unlawful conduct by their supporters (even during away matches) and for any violations of order and safety rules for incidents occurring before, during and after the event, both inside the venue and in the immediately adjacent areas. Additionally, clubs shall adopt any preventive measure against violence and disorder, constantly liaising with public authorities.

4. Corporate

4.1 Legal Sporting Structures Sports Institutions and Clubs

CONI is a public entity that maintains independence and autonomy from political and governmental bodies.

National federations are non-profit associations with legal personality under private law made up of clubs, sports associations and, in the cases indicated by their by-laws, individuals.

Also, leagues are private-law entities, whose associates are the clubs that, year by year, take part in the league tournaments. Their main functions are organising competitions; defending the interests of members with respect to the federation and/or other system entities; and providing counsel and support to the associate clubs in various sectors (eg, marketing, event organisations, governance, broadcasting rights, player transfers). Leagues are acknowledged by their respective federations, which approves their by-laws and regulations.

Professional Clubs

Professional clubs can only adopt the form of joint stock companies or limited liability companies with, as corporate scope, sports and instrumental activities. Said companies have:

- the ability to distribute profits among members, but with the obligation to allocate no less than 10% of profits to youth sports training and education centres; and
- the obligation to adopt a board of statutory auditors.

With Article 13 of Legislative Decree no 36/2021, each professional club is required to appoint an internal consulting body, composed of season ticket holders, to protect the interests of fans by issuing mandatory non-binding opinions to the board of directors.

Lately, stock exchange listing by professional clubs is viewed less positively, given the higher compliance costs and burdensome control procedures. This is increasing de-listing initiatives

(eg, AS Roma) and making centralised ownership of shares the preferred shareholding structure.

Non-professional Clubs

Non-professional clubs may adopt the form of recognised/unrecognised association (ASD) or limited/co-operative companies (SSD). Both entities shall be non-lucrative and have sports activity as the main purpose.

In terms of individual liability within ASD/SSD, unrecognised ASD do not have patrimonial autonomy, so individuals acting in name and on behalf of ASD are liable with all their assets. Conversely, recognised ASD and SSD have patrimonial autonomy and the liability of the members is limited to the capital contributed.

Due to their non-lucrative sports-educational activity, both entities may take advantage of numerous tax benefits.

Starting from July 2023, the legislation concerning non-professional clubs will be reorganised. Many aspects will remain (eg, the legal form of ASD and SSD, non-lucrative sports and educational purposes), while some aspects will be modified and/or clarified (eg, both ASD and SSD may carry out wider commercial activities (eg, sponsorship, ticketing, etc) in so far as they are still instrumental to the main one). Non-professional clubs will still benefit from numerous tax advantages only if they are registered in the newly established “National Registry of amateur sports activities” held by CONI, since said registration officially certifies the amateur/non-professional nature of a club.

4.2 Corporate Governance

Corporate Criminal Liability

Under Legislative Decree no 231/2001, companies and other legal entities are subject to a particular liability for certain offences perpetrated by persons with roles of representation and management within the company, as well as their managers and officers. To avoid liability, companies are required to:

- adopt and implement an “Organisation, Management and Control Model” (or “231 Model”), which sets principles and procedures to evaluate, monitor, prevent and manage risk of offences committed within the corporate organisation; and
- appoint a supervisory body, in charge of evaluating and monitoring the observation and implementation of the 231 Model.

The principles were also applied for sports entities. In particular, CONI required national federations to adopt their own 231 Model, which must be observed also by affiliates and members. Besides, federations can adopt guidelines to be observed by leagues and clubs that decide to adopt their own 231 Model. Certain leagues expressly requested their affiliated clubs to adopt their own 231 Model as a mandatory requirement for league membership.

Pursuant to the above, clubs participating in national championships have to adopt 231 Models and appoint a Supervisory Body to prevent acts aimed at violating the principles of loyalty, fairness and probity in all relationships.

Eligibility Criteria

In addition to the above, certain sport federations (eg, FIGC) provide that any entity willing to acquire, directly or indirectly, a membership interest at least equal to 10% of a professional

football club must meet certain financial and integrity requirements and demonstrate and/or declare (as the case may be) that they are not involved in previous criminal proceedings or in any insolvency situations involving other clubs. Upon purchase of the membership interest, all relevant documentation attesting the above requirements needs to be submitted to the FIGC for review and approval, with the consequence that, for instance, an investor will not be able to actually exercise control over the target club until approval from the federation is granted.

Insolvency in Sports

Professional clubs are subject to the same provisions stated for companies under the Italian “Business Crisis And Insolvency Code” and may be subject to judicial liquidation where certain legal requirements are met. The application of said provisions to non-professional clubs is debatable, especially when they carry out commercial activities.

Insolvency is also sanctioned by sports regulations. By way of example, the latest “Lega Serie A National Licensing System 2023/2024” states that clubs shall prove they fulfilled several obligations, including the payment of:

- fees, training compensations and solidarity contributions owed for international and domestic acquisitions of players;
- debts owed to the FIGC, leagues and clubs affiliated with the FIGC;
- emoluments, taxes, welfare, social security and end-of-career contributions due to players, coaches, members, employees, managers, medical and technical staff, etc; and
- VAT and other taxes and contributions (eg, IRAP, IRES etc).

Failing that, clubs may be excluded from the competition and their affiliation may be revoked.

However, according to recent developments, it is debatable whether the fulfilment of the above obligations can be waived or delayed by a professional club in the event it applies to a creditors’ composition procedure under the Insolvency Code or to other receivership/restructuring proceedings subject to control of ordinary insolvency courts.

In the event a club is declared insolvent by the judicial authority during the course of a sport season, to safeguard the ongoing competition, despite federation rules generally imposing the revocation of affiliation, the insolvent club may be granted with the possibility to temporarily continue its business and sport activities, until the end of the football season. If so, the revocation of the club’s affiliation would only become effective at the end of the competition. Should the club cease its activities due to insolvency, its athletes would be automatically released and the sport title (including trade marks, etc) will be subject to asset sale in the framework of a bidding procedure.

4.3 Funding of Sport

Public Funding

Italian governments are increasing funding for sports with the aim of upgrading obsolete sports facilities throughout the country and promoting sports among youngsters, women and disabled people. A significant part of said public funds is allocated yearly to sports organisations through Sport e Salute S.p.A, a joint-stock company connected to CONI.

Public funding for sports has drastically increased since the introduction of the 2021 National Recovery Plan. In particular, specific

funds have been allocated for the upgrade of public sports infrastructures and for the upgrade and/or realisations of the venues for the 2026 Winter Olympics in Milan-Cortina.

The government has also helped the sport industry by granting a deferral on certain social contribution payments, which helped clubs to manage and reschedule financial obligations (especially for football clubs where salaries and contributions are much higher than other team sports).

The Sport Credit Institute

The Sport Credit Institute (*Istituto per il Credito Sportivo*) is a “social bank for the sustainable development of Sports and Culture” granting low-interest loans to public and private entities for the implementation of sports facilities, including funds to purchase real estate lots to be dedicated to the construction of sport infrastructures.

Private Investments

Italian clubs are still heavily relying on investments made by private owners, although the amount invested is still limited relative to some other countries. Nowadays, private investments are increasingly made by international investors, showing a high level of interest in the acquisition of football club by foreign investors.

Funding for Federations

Federations are funded by CONI/Sport e Salute S.p.A, among others. The amounts due to each federation are calculated by the following:

- 60% on the importance of sports results;
- 30% on the incidence of sports practice; and
- 10% on cost efficiency.

Unsurprisingly, the largest funding goes to football, which produces 70% of the annual tax revenue of Italian sports and gives most benefits to Italy's sport industry.

COVID-19

In 2022, the government allocated EUR53 million as non-repayable funds for amateur sports entities managing gyms and sports facilities. Currently, no additional funds have been allocated for 2023.

4.4 Recent Deals/Trends

For recent trends and deals in the sports sector, please see the Italy Trend & Development chapter in this guide.

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

Registration of a Trade Mark

Italian trade marks can be registered by filling and submitting an application form shall containing: the trade mark features (type, name, descriptions, colours, etc); the product categories for which the request is filed; the applicant data (including the elected domicile for notifications) and - if necessary - a request for fast-track and further useful documents. The Italian Trade-marks Office (UIBM) then evaluates the admissibility and correctness of the application and then publishes it in the Trademarks Bulletin, in order to allow any opposition to the registration within three months. In the absence of justified oppositions, the trade mark is officially registered. The UIBM does not carry out any priority verification on the existence of previous trade marks.

It is also possible to obtain EU trade mark protection by filing a registration request at the

European Union Intellectual Property Office (EUIPO) or by requesting an EU extension of an already registered Italian trade mark within six months from the national registration request. The EUIPO route is often the preferred one, given the possibility for the applicant to obtain registration valid in the entire European Union (rather than only in Italy).

Registration Limits and Advantages

The Italian Intellectual Property Code establishes some limitations to trade mark registrations, such as:

- notorious signs in art, literature, science, politics, sports, etc, unless the holder of said signs express their consent;
- trade marks identical or similar to another trade mark regarding similar or identical products, in case it may cause confusion among the public or the later trade mark can take advantage of the reputation of the earlier one;
- signs without distinctive character;
- signs which are unlawful or deceptive; and
- geographical indications and denominations of origin with the potential to mislead the public or involving an undue exploitation of the protected name's reputation.

Despite the above restriction on geographical indications, Italian courts nowadays allow sport clubs to use and register trade marks bearing the name of the town they represent, given the fact that they acquire independent distinctive features over the years, especially when combined with club's colours and logos. In this respect, there is increased intention of professional clubs to initiate re-branding strategies to better align the graphic representation of the club to the marketing needs.

Registering a trade mark grants its creator all the relative IP rights and protection against:

- any unlawful use of said trade mark;
- any potential registration of similar competing trade marks; and
- any attempts at counterfeiting, usurpation, alteration.

To strengthen the enforceability of the trade marks and defend their marketing investments, clubs can resort also to criminal laws sanctioning anyone who trades or introduces counterfeit articles in Italy (Article 474 of the Italian Criminal Code), with the possibility to obtain prompt support from public enforcement officials. Also, sports leagues (eg, Lega Serie A) collectively negotiate with third party agencies in the interest of their affiliates to engage private investigation services to discover and prevent physical and digital distribution of counterfeit products.

The interest of the clubs in expanding the boundaries of the products covered by their trade mark to pursue wider marketing strategies is often prevented by third-party holders that, legally and in good faith, own previous trade marks, although they may be less notorious. As a notable case, in 2017 AC Milan submitted a request for EU registration of its trade mark to the EUIPO regarding, among others, office items; however, a German firm, already the holder of the word mark MILAN relating to office items, filed an opposition to the EUIPO in order to avoid confusion among German consumers. The EUIPO upheld the objection and AC Milan challenged it to the EU Tribunal, which confirmed the EUIPO's decision pointing out the actual likelihood of confusion between the two trade marks.

5.2 Copyright/Database Rights

Copyright is regulated by Law no 633/1941 (“Copyright Law”) which safeguards works of creativity, including databases, belonging to literature, music, figurative arts, architecture, theatre and cinematography. Through copyright, authors gain the exclusive right to use and publish their work, as well as the “moral rights” to claim the authorship and act against prejudicial conduct towards the work and the authors’ honour and reputation. Copyright lasts for the author’s whole life and up to seventy years after death, while moral rights have no expiration and are transmitted by inheritance.

Copyright holders are protected by the Copyright Law in multiple manners: generally, the breacher is ordered to stop using the protected work and compensate any prejudice caused to the copyright holder. The breacher may also be ordered to destroy the factual situation creating the violation.

Unlawful conduct under the Copyright Law is also punished through administrative and criminal sanctions (eg, imprisonment and fines).

Copyright law is pivotal in the sport sector, given that it can offer protection to the image rights of athletes, including their faces, jersey numbers, likeness and sports moves. A notable case regarding copyright matters involved football team Inter Milan, whose official soundtrack stopped being reproduced at the stadium due to the lack of agreement between the club and the copyright holder of the song.

5.3 Image Rights and Other IP

Image Rights are protected by the Italian Civil Code and the Copyright Law (see **5.2 Copyright/Database Rights**).

Article 10 of the Civil Code safeguards the image of an individual in case of unlawful exhibition/publication or prejudice to the decorum of said individuals, and entitles the right-holders to apply for the termination of the abuse. Image rights are untransferable, indefeasible and inalienable.

Articles 96 and 97 of the Copyright Law state that the image of a person can be exposed or sold only with the consent of said person. The only exceptions to this principle are when the image reproduction is:

- justified by notoriety or public office;
- justified by the necessity of justice, security, scientific, educational or cultural purposes; or
- related to facts, events, ceremonies of public interest or held in public.

During the 1980’s, the FIGC, the Italian Footballers’ Association and leagues signed a covenant to regulate advertising activities of professional clubs and athletes, by which players were entitled “to use in any lawful and decent form their image, even for profit, to the extent it is not associated with the names, colours, jerseys, symbols or markings of the club they belong to or other clubs”. Similarly, clubs could allow their sponsors to use their players’ image for commercial purposes only in case of “team pictures” in uniform and to promote the sponsorship agreement with the club.

Sometimes, federations put limits to the commercial exploitation of athletes’ image (connected for instance to the image in the context of a national team), especially when federations’ technical sponsors are competitors of athletes’ technical sponsors.

Just like all individuals, athletes may take any necessary actions to stop any abuse of their image, unless they lawfully express their consent to the commercial exploitation of their image by third parties. The marketing of counterfeited products constitutes a source of criminal liability, which can be preventively prosecuted and blocked directly by public enforcement official, even without the prior intervention of the right-holder.

A noteworthy case recently regarded SSC Napoli and the release of football jerseys bearing Maradona's face. The consent to the club was given by the former player's agent, but not by Maradona's heirs, who applied to the Court of Naples to stop the agent from using Maradona's image for lucrative purposes. The Court of Naples considered the agreement between the agent and Napoli "a serious damage to the heirs' patrimonial expectations". The agent was ordered to stop exploiting Maradona's image for commercial purposes and SSC Napoli was also stopped from selling further Maradona jerseys.

5.4 Licensing

Licensing is a contract by which the licensor grants the exploitation of its IP to the licensee. It represents one of the most used ways by sports subjects to commercially exploit their IP and image (eg, through merchandising bearing the licensor logo) and obtaining in return a fixed fee and/or royalties.

Clubs have the widest powers to leverage their licensing agreements using the image of the team, whereas licensing to a third party the image rights of a single athlete will be subject to consent of the latter; similarly, whenever the club is willing to use and/or license the image of under-age athletes, the consent of their parents/guardians is also required.

5.5 Sports Data

Athletes Data

Athletes' biometric data is increasingly used for competitive and commercial purposes, subject to the athlete being informed and providing consent on the processing and usage of health data. In particular, professional teams usually collect athletes' data through specific analytics software in order to study tailor-made training methodologies for each athlete. Recently, football teams have been entitled to collect and consult live statistics during matches, so that coaches now have more instruments to make tactical decisions. On a commercial level, athletes' biometric data is usually collected to facilitate scouting activities and to make video games and other digital content, in order to increase commercial appeal among the public.

Spectators' Data

Spectators' data is generally used for commercial and statistical purposes, since registering consumers' data and their preference allows business operators to identify their preference and offer products pursuant to the latest trends (always subject to consent by the data owner). Additionally, spectators' data is used for security reasons to facilitate law enforcement and event organisers in identifying perpetrators of any offences.

5.6 Data Protection

Italian data protection legislation consists of the "Privacy Code" and - most importantly - of the EU Regulation 2017/679 (GDPR), which introduced a new approach that facilitates the traffic of data and holds data controllers and processors responsible for any data breach and/or improper use.

Under the new legislation, it is possible to process personal data without consent in specific

circumstances (eg, to perform a contract to which the data subject is party, complying with a legal obligation to which the controller is subject). However, special protection is still established for the so-called “sensitive data” (eg, data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric and other health data, etc); use of this data is allowed only with the specific consent of the data subject or upon the occurrence of specific circumstances.

The GDPR has also strengthened rights of the data subject in terms of:

- transparent data treatment;
- right of access;
- data rectification, erasure and portability;
- restriction of processing;
- objection; and
- communication of personal data breaches.

Personal data of athletes and spectators must be treated in accordance with the GDPR as well. Therefore, it is necessary to provide an adequate privacy policy to data subjects and obtain specific consent for sensitive data treatment.

6. Dispute Resolution

6.1 National Court System

Decree Law no 220/2003 regulates the independence of sports law from the ordinary law, “except for relevant cases for the State legal system related to subjective legal situations connected with the sports system” and establishes exclusive jurisdiction of sports bodies (see **1.4 Disciplinary Proceedings**) for technical matters (eg, observance and application of sports regulations) and disciplinary matters.

For technical and disciplinary matters, sports individuals cannot resort to ordinary/administrative courts, but they must compulsorily apply to the competent sports justice bodies, whose decisions cannot be challenged before ordinary/administrative courts unless said matters require the solution of “relevant cases for the State legal system” (eg, criminal offences).

For administrative disputes (eg, enrolment, affiliation and registration to competitions), the parties need to pursue remedies before sports justice courts (each federation ensures at least two levels of judgment and, in specific cases, it is possible to challenge said decisions to the CONI *C ollegio di Garanzia dello Sport*, see also **1.4 Disciplinary Proceedings**), before they challenge sports justice decisions before the Lazio Regional Administrative Court (Article 135.1.g, Italian Code of Administrative Proceedings).

For economic disputes concerning labour and/or economic relationships between sports individuals and entities, the parties, in general, may apply to ordinary courts or refer the dispute resolution to arbitration. However, please consider that most collective agreements provide an exclusive arbitration venue for the resolution of said disputes (see **6.2 ADR, including Arbitration**).

6.2 ADR, Including Arbitration

Arbitration courts can be used in labour and/or economic disputes in accordance with Article 806 of the Italian Code of Civil Proceedings and Article 4.3 of the CONI Sports Justice Code.

Arbitration for labour and/or economic matters is commonplace in Italian professional sports, as collective agreements stipulated by the players’, coaches’ and sports directors’ unions with federations and leagues, as well as profession-

al contracts, all include arbitration clauses as exclusive remedy.

Competent panels generally issue arbitration awards that are binding among the parties. Arbitration awards can only be challenged for invalidity under the Code of Civil Proceedings, subject to certain specific grounds and limitations.

6.3 Challenging Sports Governing Bodies

Enforcement of Sports Sanctions

Federations have the power to impose sanctions to affiliates and members, since accepting sports law and justice - including sanctions - is an affiliation/membership requirement. Sports justice provides a wide range of sanctions, the extent of which depends on their recipients (eg, athletes or clubs), the type and seriousness of the violation.

Examples of sanctions to clubs are warnings, fines, points penalty, transfer ban, relegation and exclusion from a competition. Examples of sanctions to individuals are warnings, fines, temporary disqualification/ineligibility, ban from federation body activities and lifetime ban.

Also, mitigating and/or aggravating circumstances, unlawful association and recidivist conduct may be taken into account, whenever they are provided by Sports Justice Regulations.

Sports justice decisions are binding on the parties and failure to observe them could implicate additional and more severe sanctions.

To verify compliance with federation rules, federations can be supported by internal supervisory bodies. For example, the FIGC and FIP are respectively supported by CoViSoC and ComTec, committees with ongoing monitoring,

supervisory and control functions over professional clubs, especially in relation to the observance of economic and financial parameters.

Challenging Sports Justice Decisions

Only decisions concerning economic and administrative disputes can be challenged before ordinary/administrative courts. In particular, economic arbitration awards may be challenged before ordinary courts in accordance with the Code of Civil Proceedings. Administrative decisions may be challenged - after exhausting sports justice dispute resolution mechanisms - before the Lazio Regional Administrative Court. Relevant decisions to the State legal system can be challenged, and said relevance shall be assessed on a case-by-case basis. Please see **6.1 National Court System**.

7. Employment

7.1 Sports-Related Contracts of Employment

Professional and Amateur Sports

The relationship between sports organisations and athletes is regulated in a completely different manner depending on the professional or amateur status of the athletes. According to Law no 91/1981, only professional athletes are employees - subject to the exceptions set forth in Article 3.

Professional relationships constitute employment contracts, based on standard forms compliant with the relevant collective agreement, having a maximum duration of five years. Said contracts shall be submitted to the competent Federation/League for approval.

Labour Law is only partially applicable to professional sports relationships. In particular, some

dispositions of the “Workers’ Charter” are not applicable (eg, prohibition of using audio-visual equipment and control instruments over employees; prohibition of health checks on employees, procedures related disciplinary sanctions - only for sanctions imposed by federations, protection against wrongful termination, etc), as they are not compatible with the peculiar activities of sports persons. Furthermore, professional athletes are not subject to non-competition agreements.

In light of the above, professional athletes still benefit from many labour protections (eg, health, accident insurance, welfare, social security and retirement) in pursuance with the Civil Code and/or special laws.

Conversely, amateur athletes are bound to their respective clubs and federations through membership (so-called “sports bond”, see below) and they are not employees. Consequently, they are not subject to the application of Labour Law, to Law no 91/1981, or to mandatory welfare and social security contributions. Economic treatments are regulated through simple economic agreements and amounts are generally paid to athletes in the form of expense reimbursements, travel expenses, bonuses, etc.

The duration of amateur relationships is subject to the “sports bond”, the rules of which are established by each Federation and during which athletes may terminate their relationships with their clubs only if the latter releases them or in exceptional cases regulated by each Federation.

The “Sports Reform”

From July 2023 the new Legislative Decree 36/2021 will introduce the new figure of “sports worker” regarding sports persons (eg, athletes,

coaches, sports directors, trainers, referees, etc) who, regardless of their professional/non-professional status, are paid to perform sports activities.

The presumption of employment will apply to professionals, while amateurs will be considered self-employed in the form of co-ordinated and continuous collaboration, unless it is proved that the sports persons’ services:

- have permanent nature and exceed 18 hours per week (excluding those for participation in sports events); and
- are partly carried out in non-technical/sports aspects.

With the new legislation, exceptions to Labour Law will apply even to amateur sports persons as well as aspects typical of professional employment so far (eg, maximum contract duration, transfers of employees from one club to another, prohibition of non-compete clauses etc). Furthermore, all sports employees will benefit from an insurance policy against work accidents and illnesses and also from legislative protections concerning workplace safety, health protection, illness, injury, pregnancy, parenting and unemployment. In relation to social security/welfare protections, sports employees shall register to the Sports Workers’ Retirement Fund at INPS (which can also be accessed by the self-employed if specific conditions are met).

Abolition of the “Sports Bond”

Another major innovation of the new Sports Reform is the abolition of the “sports bond” for non-professional athletes, in order to balance opposing interests of athletes (to change clubs more easily) and clubs (to obtain economic gratification from the training of their young athletes).

Article 31 of Legislative Decree no 36/2021 imposes the elimination of the sports bond by 1 July 2023 (or 31 December 2023 for renewals of previous memberships). Nevertheless, clubs will be entitled to a training compensation whenever one of their young athletes signs their first professional/amateur sports work contract with another club.

Said compensation shall be distributed to all the athlete's training clubs during their youth proportionally to the duration and the extent of said training. Its quantification criteria, with determination delegated to each federation, shall take into account the athlete's age and the economic value first sports work contract with the new club.

7.2 Employer/Employee Rights

Employer/employee relationships are regulated by the law and by collective agreements - stipulated by athletes', coaches' and directors' unions with the relevant federations and leagues - establishing respective rights and obligations. Said rights and obligations may be general (eg, duty of loyalty) or specific (eg, limits to the performance of other sports, work or business activities during the contract term) and may vary depending on the sportsperson under consideration.

In case of breaches of the collective agreement, the sportsperson may receive sanctions (eg, warnings, fines, salary reduction and, in the most serious cases, compensation for damages and the termination of the contract); while the club may be mandated by the competent panel to stop said breach, to compensate all damages caused to the counterpart and, in the most serious cases, to terminate the contract.

Disputes on employer/employee relationships are generally referred to dedicated arbitrations (see **6.2 ADR, Including Arbitration**).

Disputes involving players often arise from a player's exclusion from the first team training sessions, mobbing, unpaid salaries, prejudicial conduct for the image of the club and/or its management, etc. Examples of disputes involving coaches and sports directors often involve episodes, during the term of the employment relationship, in which they carry out conduct that is prejudicial in relation to the honour and reputation of their employers.

7.3 Free Movement of Athletes

Limitation in terms of foreign athletes is allowed in Italy and depends on federation and league rules.

For example, for the 2022-23 season, the FIGC stated that Serie A could sign a maximum of three non-EU players, while Serie B and Serie C clubs could only sign exclusively Italian and EU athletes.

Rules influencing competitions are established by the Italian Basketball Federation for Serie A1 and Serie A2 championships. In the former, clubs shall deploy a limited number of foreigners (including EU athletes) per game - which shall be at least the same number of "Italian" players ("5+5" or "6+6" rules) - and use a maximum number of seven/eight non-EU visas per season. In the latter, clubs shall deploy a limited number of two foreigners (including EU athletes) per game and use a maximum number of two non-EU visas per season.

In any case, teams shall observe Italian legislation on entry visas for non-EU citizens.

8. Esports

8.1 Overview

Despite esports being a rising phenomenon in Italy, especially in economic terms, no specific legislation has been created so far.

Therefore, there is no legal definition of a “professional video gamer” and no dedicated tax regimes. Legislation on professional sports is not applicable; therefore, professional video gamers are deemed self-employed persons with the consequent application of all the legislation on the matter (especially for tax purposes).

It is also common to find underage professional video gamers in various esports events; their activity is subject to limitations under general underage labour legislation.

In this non-regulated scenario, Italian members of Parliament have recently introduced multiple draft laws to lay the groundwork for the regulation of esports.

9. Women’s Sport

9.1 Overview

In recent years, Italian women’s sports have found growing interest from the public, televisions and sponsors. While some disciplines (especially volleyball) have always been highly popular among women, football is the fastest-growing discipline among Italian women’s sports.

The FIGC began a path of reforms involving professional clubs - granting exceptional authorisation to buy the sporting title of a women’s amateur club - which led the Women’s Serie A to

be the first professional women’s competition in Italian sports.

Despite increasing numbers, female athletes suffer disadvantages and discrimination compared to men, especially in professional sport. This has motivated international institutions to take actions against discrimination. For example, the FIFA RSTP (especially Article 18-quater) established new rules aimed at protecting female footballers’ rights to pregnancy and maternity leave and their right to work during and after the events, with severe sanctions being placed on clubs breaching the rules and on federations failing to guarantee these protections.

Italy’s legislature advocates for gender equality in sports, and the “Sports Reform” takes into account gender equality “both in the professional and amateur sectors” as one of its purposes, establishes the “Fund for professional women’s sports” and promotes gender equality in sports management and administration roles.

Most importantly, due to the introduction of the “sports worker” figure, all sportswomen will be eligible for welfare, retirement, and social security protections (including those related to pregnancy and maternity) that the law had not historically granted to any amateur or female athletes (see **7.1 Sports-Related Contracts of Employment**).

Female professional athletes will take advantage of all aspects of professional sport contracts, such as engaging in collective agreements, the adoption of a standard employment contract and the right to be assisted by a sports agent in transfer operations, etc.

10. Non-fungible Tokens (NFTs)

10.1 Overview

NFT and Italian Law

Despite their increasing relevance, NFTs are not regulated by Italian Law. Awaiting specific regulations at both national and European levels, law operators are trying to regulate NFTs through the analogical application of several pieces of legislation regarding similar assets (eg, in terms of copyright, money laundering, consumers' protection, etc).

NFT and Italian Sports

Due to their success among sports fans, sports organisations and athletes are increasingly entering into agreements with NFT companies in order to create unique collections to be placed on the market.

This is the case of the football Serie A (which has stipulated an agreement with French NFT platform Sorare), the basketball Serie A1 (which has issued a collection of NFT on the occasion of the 2022 Italian Cup Final Eight) and many important clubs (eg, Inter Milan, AC Milan, Juventus, AS Roma, SS Lazio).

Sponsorships

In addition to the initiatives above, crypto companies are trying to increase their brand value and widen their fan base through the subscription of sponsorship agreements with leagues and clubs: the most relevant examples involve entities like Lega Serie A, Inter Milan, AC Milan, AS Roma and SS Lazio, and companies like Socios, Zytara Labs, BitMEX and Binance.

11. Regional Issues

11.1 Overview

Brexit also had an impact on sports in Italy, in particular in relation to freedom of movement and limitations to non-EU citizens (see 7.3 **Free Movement of Athletes**). British athletes are indeed non-EU individuals; therefore, they are subject to all the limitations established by the law, federations and leagues in relation to foreign and/or non-EU athletes.

Trends and Developments

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LAWP Studio legale e tributario is a law and tax firm with over 20 years of providing assistance in corporate and commercial transactions (including M&A, financing and joint ventures transaction in the sport industry). **LAWP** successfully operates in civil, commercial and tax law and its professionals are particularly appreciated

in the handling of complex issues requiring diverse skills and innovative solutions and assist national and international clients in connection with cross-border matters impacting several jurisdictions. **LAWP** provides assistance to sports clubs, athletes and agents, assisting them in contractual, corporate and tax matters.

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STUDIO LEGALE E TRIBUTARIO

M&A Transactions in the Football Industry and Corporate Finance Implications

Among the most visible trends and developments involving the sport market in Italy, there has certainly been an increase in number (and value) of M&A transactions involving Italian professional football clubs, most often by foreign entities. This is bringing forward the need to understand the relevant corporate finance implications for the clubs and their ownership.

The above trend has been certified by the Italian national football federation (FIGC), which in its 2022 annual report (a comprehensive detailed report addressing the status of the Italian football industry, published on a yearly basis by FIGC) highlights that “in recent years, numerous financial players (mainly private equity, investment funds and special-purpose acquisition companies) have started to invest in sports organisations (acquisition of majority or minority shares), a trend that accelerated further during the pandemic, confirming the strong attractiveness of the sector”.

More specifically, according to said report, in the last two years as many as 55 European first-division clubs changed ownership. Italian football leagues were the most involved, with five clubs undergoing an M&A transaction leading to

a change in their controlling shareholder. Of the new owners, 42% were based in a country different from that of the relevant club, with investors from the United States topping this list.

As of today, many Italian professional clubs are owned by foreign entities, including clubs in Serie A (eg, AC Milan, Inter Milan, AS Roma, AC Fiorentina, Bologna FC, Spezia Calcio), in Serie B (eg, Genoa, Venezia, Pisa, Palermo, Spal, Como) and in Serie C (eg, Cesena, US Ancona).

The trend concerning foreign takeovers of Italian clubs is likely to remain strong in 2023 and in the years to come given the high level of interest associated with Italian football which may attract further investors. There may also be further transactions involving the same clubs, in that one investment firm may transfer its shareholding to another incumbent investor (a scheme often seen in private equity transactions in other industries).

Some existing factors may help to corroborate the above trend.

- The proprietary structure and governance model of Italian football clubs is still very closed, with the vast majority of clubs in all professional leagues having one single

shareholder; this increases chances of an ownership shift and leaving room for minority investors.

- Italian football clubs are heavily reliant on their owner's equity and contribution to finance day-to-day activities, transfer market activities and other infrastructural projects. In a post-COVID-19 context, balance sheets are still impacted by higher employee's costs and lower revenues. Therefore, current owners may need the support of external partners and new shareholders willing to continue and finance the venture.
- The existence of a strong interest by foreign investors for football clubs of lower divisions (Serie B and Serie C), which widens the pool of potential targets. In fact, clubs of junior leagues may feature lower valuation multiples, lower operation costs, and fairly high visibility and number of fans; this offers a higher growth potential, with a boost given by a potential promotion to higher leagues.
- The increased attention from authorities and football leagues to plans for the construction and modernisation of new sporting facilities (including both main stadiums and training centres), in a framework where almost all of the football stadiums of professional teams in Italy are publicly owned and leased to the clubs. In fact, both the FIGC and the leagues are promoting initiatives to facilitate major renovation of sports facilities, including the partial reimbursement of expenses incurred for infrastructures and youth team facilities. At the government level, certain measures have been already implemented to facilitate the authorisation process necessary to create or improve sport infrastructures and current negotiation tables are open with local authorities and clubs to invest public funding in certain projects for the construction of new

sport venues together with other surrounding real estate development initiatives.

In addition to the above, the presence of a sufficient number of foreign owners within Italian professional leagues (eg, Lega Serie A, Lega Serie B) is creating a "core" of clubs with more aligned interests within the league assembly, strengthening their representation powers. This impact on the governance of the leagues may help in bringing forward opportunities to develop newer business models (for instance, on the marketing of collective media rights and digital products), focusing more on international markets for media rights to boost their exploitation abroad, promote wider brand protection initiatives, support improvements in tournament organisation, with the attempt to increase the pool of revenues to be distributed among members.

The entrance of a significant number of foreign investors within the championships may also help the development of best practices on business funding and management, to address sustainability targets.

On the other hand, challenges are still imposed on foreign investors when approaching the acquisition of an Italian professional football club, in particular with reference to the need to perform accurate due diligence (legal, tax, financial, infrastructural and business) and consider the regulatory framework, and the existence of an ongoing supervision by controlling bodies. For instance:

- certain eligibility and financial requirements need to be met by incumbent shareholders;
- certain limitations are imposed on any potential purchaser preventing the acquisition of a controlling interest in two separate professional football clubs; and

- certain ongoing controls are carried out by the FIGC to ensure the financial stability of the club, with reporting obligations over financial statements, quarterly accounts and compliance with other financial ratios.

Among financial ratios to be considered by prospective investors, there is also the liquidity index, which measures the ratio between current assets and current liabilities, in the amount approved by the football federation for each league (ranging between 0.5 and 0.8). If said ratio is not met (due to an excess of liabilities over assets) and if any existing shortfall is not promptly covered, the club may face sanctions, for example, the freeze of market transfer or a ban from participating in the championship.

Thus, it is pivotal for new owners to assess alternative sources of financing and create a healthy balance between equity and debt. Thanks to the implementation of managerial driven organisations by foreign ownerships, alternative business models may develop, focusing on cost efficiency, alternative revenue streams, international youth academies and selected borrowing, with the main objective of creating a more sustainable business.

In this context, many mid-small football teams are trying to develop their mid-long term financial strategies through innovative means. Among them there is the recourse to the issuance of financial instruments (ie, bonds) over equity crowdfunding platforms, to engage supporters, stakeholders, as well as international institutional investors in funding initiatives.

The Sports Law Reform

From July 2023 (unless further postponed), the Italian Sports Reform will be completely effective, and will mark a milestone in the history of

Italian Sports Law as it generally applies to all sports.

The Reform was designed with the aim of resolving some long-standing issues and reorganising the relevant discipline of sports law. Therefore, in 2021, the government adopted five Legislative Decrees:

- no 36/2021, concerning the regulation of amateur sports clubs and sports work;
- no 37/2021, concerning sports agent services;
- no 38/2021, concerning sports infrastructures;
- no 39/2021 concerning fulfilments related to sports organisations; and
- no 40/2021 concerning safety measures in winter sports.

Legislative Decree no 36/2021 carries out the most relevant changes, since it reorganises the discipline of amateur sports clubs and – most importantly – it introduces the new figure of “sports worker”. Said rules are also co-ordinated with Legislative Decree no 39/2021, which establishes the fulfilments that amateur sports organisations shall undertake to benefit from all the advantages of their status.

Some of the key provisions covered by the Italian sports law reform are discussed in this chapter.

Sports work relationships

With the introduction of the new category of “sports worker”, athletes, both professional and non-professional, are considered as ordinary workers if they perform sports activities with the payment of a consideration. Professional athletes are qualified as employees, while non-professional athletes are regulated under a

semi-independent status, subject to certain conditions.

The Sports Reform also introduces the category of so called “volunteers”, which includes sports people performing sports activities spontaneously and for free, for amateur purposes only. Said individuals do not receive a salary or consideration, but may obtain only a reimbursement for actual expenses incurred. Such reimbursements do not constitute a source of income.

The main innovation set by the new rules is the application to all non-professional workers of many protections established by labour laws, including health protection, workplace safety, social security and retirement allowances. Additionally, non-professional athletes having employee status may now benefit from insurance policies, pregnancy, maternity leave, etc.

Important taxation advantages will be maintained for non-professional sportspersons, since annual incomes up to EUR15,000 will not be taxed. Beyond said threshold, workers’ incomes will be subject to taxation at ordinary tax rates, but only for amounts exceeding the EUR15,000 threshold. Bonuses connected with results in sports competitions will not be deemed sports work income and will discount the 20% withholding tax, subject to certain exclusions and limitations.

However, non-professional athletes have the obligation to contribute funds to the competent welfare and social security institutions, the amount of which may depend on the type of relationship established (employment, self-employment) to be allocated between the employer and the employee. To soften the introduction of said new rules, until 2027 social security tax rates and retirement taxable amounts for non-employ-

ment work relationships will be reduced to 50%. Therefore, it is likely that non-professional sports clubs will need to take into account the social security burdens resulting from the establishment of an employment relationship with their athletes.

Amateur clubs

Article 6 of Legislative Decree no 36/2021 established that amateur clubs can take only the following legal forms:

- sports association without legal personality;
- sports association with legal personality under private law;
- corporations;
- co-operative companies; and
- third sector entities registered in the National Register of the Third Sector that carry out sports activities.

Every amateur club must have sports, training, educational and non-lucrative purposes, preventing them from distributing profits among members. There is an exception for amateur sports corporations and co-operative companies, which have the possibility to distribute a share of less than 50% of annual profits and surpluses to members. This threshold is increased to 80% in favour of corporations and co-operative companies managing swimming pools, gyms or sports facilities in their capacity as owner, tenant or lessee.

The National Registry of Amateur Sports Activities

Legislative Decree no 39/2021 established the new National Registry of Amateur Sports Activities - which is already active as of 31 August 2022 - to which all amateur sports clubs have to register as a mandatory requirement to certify the amateur nature of said entities.

Indeed, through the Registry, amateur clubs may also apply to obtain legal personality expediting the process and requirements ordinarily provided by the law and they become eligible for tax benefits related to the amateur status.

Abolition of the “sports bond” and training compensation

Article 31 of Legislative Decree no 36/2021 abolishes the so-called “sports bond”, to support the freedom of choice of athletes and attribute them more bargaining power. However, to encourage the training of young athletes, there is an easing of the rules on granting amateur clubs training compensation whenever one of their young athletes signs their first professional sports contract with another club, regardless of the type of work relationship.

In said cases, training compensation shall be paid to all the athlete’s training clubs proportionally to the duration and the extent of the athlete’s training at each club. The quantification criteria are delegated to each sport federation and shall take into account the athlete’s age and the consideration to be paid under said first sports contract.

The New FIFA Football Agent Regulations

The introduction of the new FIFA Football Agent Regulations (“Agent Regulations”) – fully effective from 1 October 2023 – attracted numerous criticisms from football agents, on whom the new Regulations will put important limits, especially in terms of dual representation and service fee cap.

FIFA returned to regulate the football agent services after the 2015 “deregulation” with the following main purposes:

- “raising and setting minimum professional and ethical standards”;
- “limiting conflicts of interests to protect clients from unethical conduct”; and
- “preventing abusive, excessive and speculative practices”.

The new Agent Regulations will impact national legislation and sports rules concerning agents and – despite Italy having articulate and restrictive laws and rules, especially in terms of mandatory licensing and formal written agreements – it may be necessary for the FIGC to carry out some adjustments to comply with the new mandatory FIFA principles.

The entrance into force of the Agent Regulations is inspiring a strong debate in Italy, constituting one of the main trends to watch in 2023. The Italian Football Federation will be obliged to implement new provisions which are consistent with the new FIFA regulation and it will be called to take a position on the compatibility of the most controversial new Agent Regulations within internal and EU provisions protecting the freedom of business activity and competition.

National agents regulations will remain in force and will apply to national transactions (Articles 2.3 and 3.2), since the Agent Regulations will apply only to representation agreements with an international dimension – which implies the involvement of players and clubs belonging to different National Federations – in particular whenever they are connected to (Article 2.2):

- international transfers of players or international moves of coaches; and
- multiple transactions, one of which is connected to an international transfer of a player or to an international move of a coach.

Listed below are some of the most interesting features of the new Agent Regulations.

Coaches' agents

The Agent Regulations formally establish for the first time the possibility for coaches to be assisted by football agents. Before that, only players could be assisted by agents (even though, in practice, up until now coaches were still assisted by agents). The current FIGC Agent Regulations (which will need to be amended) specify that agents represent players (and not coaches) in a national transaction.

Licensing system

Pursuant to Article 11.2 of the Agent Regulations, agents may perform their services only if they meet the eligibility requirements under Article 5 regarding, by way of example, absence of criminal convictions, sports sanctions, conflict of interests and insolvency. Said requirements shall be maintained at the time of the application and after obtaining the FIFA licence.

To carry out activity as a football agent, the applicant will need to obtain a licence, subject to the payment of an annual fee and passing a test administered by FIFA concerning football regulations (Article 6).

As mentioned above, the licensing system has been effective in Italy since 2019 – further to the implementation of the “Sports Reform”, Legislative Decree no 37/2021 – and requires applicants to pass three tests (two general tests within the Italian National Olympic Committee (CONI) and a special test within the sport federation in which the agent would like to practice). The Italian regulators will now be required to co-ordinate the licensing system already in place, with the new principles set forth by FIFA.

In addition, more detailed provisions are provided by FIFA on the content of standard contracts between agents and clubs/athletes/coaches, which will strengthen the rules already adopted by FIGC, as currently in force.

Conflict of interest and multiple representation

Article 11.8 of the Agent Regulations further limits conflicts of interest by establishing that agents may perform their services only for one party per transaction, with the only exception applying if the agent provides their services to the player and the engaging club with the prior explicit written consent of both parties. In this framework, other structures of multiple representation are forbidden.

This rule will be highly controversial as it may undermine the recurrent phenomenon whereby agents were allowed, directly or indirectly, to represent all parties involved in the transaction, which is currently permitted by Article 21.5 of the FIGC Agent Regulation subject to the parties providing prior written consent.

Service fee cap

Another controversial feature regards the introduction of the “service fee cap” under Article 15 of the Agents regulation, by which FIFA intends to curb pressure on clubs posed by agency costs. Before said rule, FIFA only recommended agency fees not to exceed 10% of the transfer fee for agents of releasing clubs, or 3% of the players remuneration for players/engaging clubs' agents.

With the new Regulations, said cap becomes mandatory and is quantified as follows:

- 3% of the player's remuneration whenever the agent represents the player or the engaging

- club and said player's annual remuneration is above USD200,000 (or equivalent);
- 5% of the player's remuneration whenever the agent represents the player or the engaging club and said player's annual remuneration is less than or equal to USD200,000 (or equivalent);
- 6% of the player's remuneration whenever the agent represents the player and the engaging club and said player's annual remuneration is above USD200,000 (or equivalent);
- 10% of the player's remuneration whenever the agent represents the player and the engaging club and said player's annual remuneration is less than or equivalent to USD200,000 (or equivalent); and
- 10% of the transfer fee whenever the agent represents the releasing club.

It will be interesting to see how the fee cap will be framed within the Italian sport regulations and, in particular, whether the solution adopted by Italian authorities/federations will provide a strict ban or rather a recommendation to prevent conflicts with internal and EU provisions protecting the freedom of business activity and competition.

Women's Football

Women's football in Italy enjoyed notable progress in the Italian sports scene over recent years, as much in competitive terms as in legal and economic terms.

As a first step, with the input of UEFA and FIFA, the FIGC decided to launch a project to reform women's football with the aim of integrating it with men's football, allowing professional clubs – as an exception to Article 52 of the FIGC NOIF – to acquire the sporting title of a women's team, and requiring professional teams to create their own women's youth sector.

Furthermore, the FIGC created the Women's Football Division (independent from other football leagues), which is in charge of organising the Serie A, Serie B, Italian Cup, Super Cup and Youth Championship.

Over the years, the FIGC reform has led to an exponential increase of interest in Italian women's football, thanks in part to the surprising results of the Women's national team at the 2019 World Cup. This competition probably represented the turning point for Italian women's football; it saw incredible media success, with a total of 24.41 million Italian viewers (an average of 4.88 million per match, compared to the previous record of 0.6 million per match).

This has also led to a rampant growth of interest in the Women's Serie A; since 2016, interest has indeed grown by 108% and the number of followers on social media has grown by 66%. As a result, ratings and especially stadium attendance have also grown. Historic stadiums used by the most prestigious men's teams have hosted women's matches for the first time, with the record of 39,027 spectators and 324,628 viewers set by Juventus. Fiorentina played at Juventus Stadium in the 2018-19 season, as confirmed by the FIGC women's soccer development strategy 2021-25.

Integration between men's and women's football also saw women refereeing men's professional football matches.

In 2021, the FIGC presented the women's soccer development strategy for the four-year period 2021-25, having the following key goals:

- increasing the women's soccer community (spectators, viewers and followers on social media);

- increasing by 50% the number of young female athletes aged 5 to 15, and increasing the number of clubs offering women's soccer, encouraging agreements between clubs and schools, and encouraging mixed boys/girls activity at a young age;
- improving the competitiveness of women's national teams and raising the commercial value of women's soccer and its exponents;
- applying for the organisation of an international event; and
- introducing professionalism in Serie A.

The latter two goals have already been achieved. In particular, with reference to international competitions, Turin hosted the 2022 UEFA Women's Champions League Final between FC Barcelona and Olympique Lyonnaise.

Most predominantly, 2021 also brought the professionalisation of Serie A female footballers starting from season 2022-23, which allows said athletes to benefit from many protections accompanying the professional status (eg, insurance policy, workplace safety, health protection, illness, injury, unemployment, social security/welfare contribution, maternity and parenting) under Law no 91/1981 and, from July 2023, under the "Sports Reform" and especially Legislative Decree no 36/2021.