

NEWSLETTER

Sports and Gaming Laws
April to June, 2021

New Delhi

C-2/39
Safdarjung Development Area
New Delhi – 110016 | India

Mumbai

604, 6th floor, Regent
Chambers, 208, Nariman
Point, Mumbai-400021 | India

Bengaluru

316, 3rd Floor Raheja Chambers,
No. 12, Museum Road,
Bengaluru - 560001 | India

ABOUT US

TMT Law Practice is a boutique law firm providing a full suite of services in the TMT sectors. Over time, the firm's practice has expanded from a niche boutique IP practice, to include practice areas such as commercial disputes resolution & arbitration, regulatory litigation & advisory, corporate/commercial advisory and transactional support, and policy and legislative drafting across industry verticals. The Firm represents a broad range of clients including Fortune 500 companies, as well as MSMEs and Start-ups.

The firm engages in the practice of the conventional domains of law, and, is also heavily invested in the niche areas of emerging technology, including space technology and policy; healthcare and ICT; data privacy and protection; and, sports laws.

The Firm stresses on developing well-rounded, solution - oriented professionals, who specialize in client - focused service delivery.



1. NON-FUNGIBLE TOKENS¹

The potential of Non-Fungible Tokens (NFTs) as a new stream of revenue is fast catching popularity in sports. A NFT is a unique, individual, uninterchangeable token existing on a blockchain such as Ethereum. Every NFT has a digital signature that makes it impossible for NFTs to be exchanged for or equal to one another.

The National Basketball Association (NBA) was one of the first sports leagues to exploit the popularity of digital collectibles, which it did with its Top Shot initiative. Top Shot used the digital asset technology to sell packs of limited-edition NBA highlight clips. Recently, International Olympic Committee & nWay announced the launch of NFT Olympic Pins and a License Agreement was executed between the two in this regard. NFT Olympic Pins are digital versions of collectible & tradeable Olympic Pins.

Some of the other examples of sporting bodies showing interest in NFTs are Major League Baseball partnering with Topps² and Candy Digital³ and French Football Federation with Sorare⁴. The Premier League is also exploring the idea of creating NFTs, however no decisions have been taken so far on the entrance in the market.

2. MEGHALAYA AMENDED GAMING ACT TO REGULATE ONLINE GAMING⁵

The Meghalaya Regulation of Gaming Act, 2021 replaced the Meghalaya Prevention of Gambling Act, 1970 on March 26th, 2021. While the former act punished anyone involved in the operation of games involving betting and wagering (except lottery & wagering on horse racing), the current act regulates the 'games of skill' & 'games of chance' and states that:

- an operator offering games of skill or chance, including betting, or wagering of money or money's worth should apply for a license;
- the license would only be granted to Indian citizens or companies incorporated in India - valid for 5 years;
- license holder shall pay the Licensing Authority, a license fee plus a '*Gaming Royalty*'. Gaming Royalty means a percentage of the total amount of bets made & the revenue generated from advertising, marketing, & promotion, minus the value of winnings, prizes, bonuses, discounts, cash backs & payment gateway charges;
- a new committee called 'Meghalaya Gaming Commission' will be formed, to monitor the gaming activities in the State; and
- the act is not applicable on the game of arrow shooting (*Teer*) & lotteries in the State.

¹<https://documentcloud.adobe.com/link/review?uri=urn%3Aaaid%3A-scds%3AUS%3A67c37caf-2d46-4775-ba7a-d4d2827dbfc5#pageNum=8>

²<https://www.usatoday.com/story/sports/mlb/2021/04/12/topps-launch-nft-baseball-card-series-mlb-partnership/7193202002/>

³<https://www.mlb.com/press-release/press-release-mlb-candy-digital-nft-partnership>

⁴<https://www.ledgerinsights.com/sorare-launches-french-football-national-team-nfts/>

⁵[http://meglaw.gov.in/Notification/LL_\(B\)_46_2020_70_Dated_Shilloing_the_26th_March_2021.pdf](http://meglaw.gov.in/Notification/LL_(B)_46_2020_70_Dated_Shilloing_the_26th_March_2021.pdf)

3. **MAHARASHTRA HIGH COURT ISSUES NOTICE TO THE STATE GOVERNMENT REGARDING THE GAME OF LUDO⁶**

A petition was filed in the Bombay High Court seeking registration of an FIR against the makers of Ludo Supreme – Cashgrail Pvt. Ltd. The FIR was earlier refused by the concerned police station, deeming the game as a game of skill. Ludo Supreme, offers an online (for stakes) representation of the physical board format of the game, *Ludo*. The platform purports the format of *Ludo* offered as a game of skill. Later, the local metropolitan court was approached, however, the magistrate also rejected the complaint filed & held the gameplay to be a game of skill & not a game of chance. Games of chance, when played for stakes, are prohibited under Section 3 of the Maharashtra Prevention of Gambling Act, 1887. It is contended that Ludo is a game of chance, and also raises further concerns about the platform's involvement in offering activities that may be deemed as gambling, user's limited control, participation of kids & financial risks involved. Bombay HC issued notice to the state government to address the concern.

4. **DRAFT UTTAR PRADESH PUBLIC GAMING (PREVENTION) BILL⁷**

The UP-State Law Commission submitted the draft of the Uttar Pradesh Public Gaming (Prevention) Bill to the chief minister on June 15th, 2021. The draft recommends prohibition of public gambling, including online gambling & various forms of betting, putting them in the category of non-bailable offences. Currently, the UP-Public Gambling Act, 1961, provides an imprisonment of 3

months & a fine of Rs. 50 as compensation for gambling in public. The Commission has recommended revising the punishment to fine to Rs. 5000 & imprisonment of 1 year, which can further be extended up to 3 years as per the court's wish. It also proposed that if betting was being conducted in a gambling house or any premises, then it would be presumed that the amount recovered is related to gambling and all the people present there were gamblers.

5. **NAOMI OSAKA: BATTLE OF OBLIGATIONS AND MENTAL HEALTH⁸**

Japanese tennis player, Naomi Osaka, refused to participate in the media conferences during the French Open, stating depression and mental stress as reasons. Following this, the organizers fined her and threatened her with disqualification from the tournament. She however, later, withdrew from the tournament.

Players are selected by National Sports Associations to participate at the international tournaments, whereby players are required to comply with the Code of Conduct of the International Federations. One such obligation imposed by the International Tennis Federation is for the players to attend the post-match media conferences (Art. Q).

While sport thrives on marketing and a large part of the revenue hinges upon the popularity of star players (as a result of which tennis is now committed to equal prize money), however this also highlights the issue pertaining to mandatory obligations, which may affect a players' existing mental health, which

⁶<https://www.ndtv.com/offbeat/is-ludo-a-game-of-chance-or-skill-matter-in-high-court-memes-on-twitter-2458758>

⁷<https://www.medianama.com/2021/03/223-up-regulate-online-gambling/>

⁸<https://www.rolandgarros.com/en-us/article/statement-from-grand-slam-tournaments-regarding-naomi-osaka;>

<https://www.rolandgarros.com/en-us/article/statement-from-roland-garros>

may eventually lead to affecting the performance of a player.

FOOTBALL UPDATES

- a. **FIFA bans 2 (two) Indian Super League Clubs from signing new players⁹:** World football governing body FIFA has banned Indian Super League (ISL) clubs SC East Bengal and Kerala Blasters FC from signing any new players in the transfer window because of non-payment of dues to former recruits. Two ISL players, Matej Poplatnik (Kerala Blasters FC) & Jhonny Acosta (SC East Bengal), have filed complaints against their respective clubs, before FIFA for non-payment of salary in accordance with the contract. The ban maybe lifted once the respective clubs make good the default in payment of salaries.
- b. **AIFF announced CRS fee waiver for clubs, academies¹⁰:** Ahead of the financial hurdles caused due to the COVID-19 pandemic, the All-India Football Federation (AIFF) has decided to waive off its share of the Centralized Registration (CRS) Fee for player registrations, renewals, and transfers for the Season 2021-22. In addition, AIFF has amended the AIFF Regulations on the Status and Transfer of Players and Rules Governing the Procedure of the AIFF Players' Status Committee in compliance with the FIFA RSTP. The amended regulation came into effect on June 1st 2021.
- c. **European Super League (ESL)¹¹:** A breakaway annual football competition, the ESL, to be contested between European football clubs was announced on April 18th, 2021 by Florentino Pérez, the president of

Real Madrid, to be operated and managed by the ESL Company, S.L. (**Company**). ESL, proposed to be financed by JP Morgan, was structured as a 20 team-competition with 15 clubs as founding members and 5 clubs qualifying, annually, based on their domestic achievements. Post the announcement, numerous politicians and entities such as FIFA, UEFA, the Premier League, La Liga, the Spanish FA, the Italian FA and Serie A issued statements criticizing the clubs' behaviour and threatened expulsion from their respective domestic, European or world level competitions.

Following the criticism, 9 (out of 12 participating) clubs announced their withdrawal from ESL, and the competition was suspended indefinitely. However, clubs like Barcelona, Juventus and Real Madrid continued their support to ESL and defended the competition. The Company approached the Madrid Commercial Court (**Court**) for an injunction to prevent the football regulators from taking any action against the ESL and those supporting ESL, and on April 20th, 2021, the Court, in a preliminary ruling, stated that the regulators must not impose sanctions on the clubs or the players planning to sign up for ESL. Yet for reasons of such extended support to ESL, warnings and disciplinary proceedings were initiated by UEFA on May 26th, 2021, against these 3 clubs.

On May 31st, 2021, the ESL, believing that UEFA and FIFA had breached EU competition laws by preventing the clubs from breaking away, filed an anti-competitive complaint to the CJEU against UEFA and FIFA for their proposals to stop the organization of ESL. A formal notification was sent, on June 2nd, 2021, to UEFA by the competent Swiss authorities, following which the UEFA Appeals Body,

⁹<https://www.espn.in/football/indian-super-league/story/4403651/fifa--hands-isl-clubs-sc-east-bengal-kerala-blasters-transfer-bans>

¹⁰<https://www.the-aiff.com/article/aiff-announces-season-dates-and-crs-fee-waiver-for-clubs-academies>

¹¹<https://dailycannon.com/2021/07/judge-european-super-league-fines-scrapped/>

on June 9th, 2021¹², decided to temporarily stay the said disciplinary proceedings against the 3 clubs.

On July 1st, 2021, the Court ordered that all financial and legal sanctions brought against the ESL plotters, including the English clubs, be cancelled, with immediate effect, as it is in violation of the earlier ruling dated April 20th, 2021 and the provisions of the European Union Competition Law. The Court also blocked UEFA from imposing any further sanctions on the three clubs supporting ESL.

- d. **Health support to football players through FIFPRO and FIFA¹³:** FIFA reached an agreement with FIFPRO to establish the FIFA Fund for Football Players (FIFA FFP) aiming at providing financial support to players who have not been paid and have no chance of duly receiving the wages agreed with their clubs. While these grants will not cover the full amount of salaries owed to players, this fund will provide an important safety net.
- e. **Temporary amendment of Law 3 by FIFA¹⁴:** Due to the impact of COVID-19 on football, the Board of Directors of International Football Association Board (IFAB), the body that determines the Laws of the Game of association football, extended the optional temporary amendment to *Law 3 – The Players (Amendment)*. The Amendment provides the competition organisers an option of allowing teams to use up to five substitutes per match. Any competition that is completed before December 31st, 2022, will be allowed to implement the rule without any modification. According to the Amendment:

- each team will be permitted to use a maximum of five substitutes;
- each team will have a maximum of three opportunities to make substitutions during the game, and may additionally make substitutions at half-time;
- the use of return substitutes is not an option for senior competitions;
- Unused substitutions and opportunities are carried forward into extra time.

CRICKET UPDATES

- a. **Removal of Mohd. Azharuddin as HCA president¹⁵:** Mohd. Azharuddin was removed as Hyderabad Cricket Association (HCA) President by the Apex Council. He was alleged to violate the rules as he did not disclose that he is a member of a Dubai private cricket club which allegedly participates in a tournament that has not been recognized by the BCCI. A show cause notice was sent to him. Meanwhile, Mr. K John Manoj, former vice president of HCA, was appointed as the interim president. However, on July 4th 2021, Mohd. Azharuddin was reinstated as the president of the HCA by Ombudsman Justice (retd) Deepak Verma. In his order, the ombudsman found the 5 members of the Apex Council guilty of obstructing the smooth functioning of the association by (a) not following the due process of passing the resolution for removal of the president; and (b) questioning the appointment of the ombudsman.

¹²<https://www.uefa.com/insideuefa/mediaservices/mediareleases/news/026a-127ac8d9a2a5-ae10445760c4-1000--disciplinary-proceedings-against-barcelona-juventus-madrid-temp/>

¹³<https://www.fifa.com/who-we-are/news/fifa-fund-for-football-players-over-1-000-applications-approved#fifa-ffp-images2>

¹⁴IFAB Circular 23_EN (kxcdn.com)

¹⁵http://www.hycricket.org/data-2021-22/Ombudsman_HCA_ORDER_dated_04.07.2021.pdf

b. TNCA president found to be in conflict of interest¹⁶: Tamil Nadu Cricket Association president Ms. Rupa Gurunath is found to be in indirect conflict of interest by holding two posts simultaneously, as she is also one of the directors of India Cements Limited (that runs Chennai Super Kings Cricket Limited), which she failed to disclose. Rule 38(2) of the BCCI Rules & Regulations stipulates that every individual shall, within 15 days, disclose, in writing to the BCCI Apex Council, any existing or potential event that may be deemed to cause a conflict of interest, failure of which renders the individual open to disciplinary action, including termination & removal without benefits.

c. Umar Akmal's ban reduced by CAS¹⁷: Court of Arbitration of Sports reduced Umar Akmal's 18-month ban by 6 months, making him eligible to return to representative cricket, subject to him paying a fine of PKR 4.25 million (approx \$27000) and taking part in the programme of rehabilitation under the board's anti-corruption code. He was found guilty of violating Article 2.4.4, which deals with: "Failing to disclose to the PCB Vigilance and Security Department (without unnecessary delay) full details of any approaches or invitations received by the Participant to engage in Corrupt Conduct under this Anti-Corruption Code. The athlete has complied with the said condition and has paid the fine of PKR 4.25 million (approx. \$27,000), entitling him to join the Anti-Corruption Rehabilitation Program of the Pakistan' Cricket Board.

d. ECB launches the Ninety-90 Bash¹⁸: The Emirates Cricket Board (ECB), an Associate Member of the International Cricket Council (ICC), approved organising the 'Ninety-Bash', a franchise-based 90-ball tournament, first edition of which is planned to be held in 2022. Ninety-90 Bash, also known as the 90/90 is an upcoming annual franchise-based 90-ball cricket league in the United Arab Emirates which will originally be the extended version of the T10 League. Matches will be 15-overs per side and the duration of each match will be 135 minutes. However, no official statement in this regard has been released by the ICC as of date.

ANTI-DOPING UPDATES

- a. Launch of the Doping Control Officers Central¹⁹:** WADA has launched 'DCO Central', a new doping control sample collection application which is now entirely paperless and provides the Doping Control Officers from ADOs and Sample Collection Agencies with an online and offline solution for secure and fast data collection as part of doping control sample collection.
- b. Approved DBS method for banned substances²⁰:** The Executive Committee of the WADA unanimously approved the technical document on the innovative method of screening dried blood (DBS) for banned substances to complement current anti-doping practice and strengthen WADA's capacity to track down athletes involved in substance abuse. The technical document shall be effective from September 1st, 2021, however, certain elements of DBS testing will be tried at the Olympic and Paralympic Games to be held

¹⁶<https://indianexpress.com/article/sports/cricket/ethics-officer-points-to-rupa-gurunaths-conflict-of-interest-7342969/>

¹⁷<https://www.thehindu.com/sport/cricket/umar-akmal-pays-45-million-rupee-fine-to-take-part-in-anti-corruption-units-rehab-program/article34649646.ece>

¹⁸<https://gulfnews.com/sport/cricket/new-ninety-90-bash-cricket-league-to-be-held-in-the-uae-next-year-1.80197397>

¹⁹<https://www.wada-ama.org/en/media/news/wada-launches-dco-central-a-paperless-solution-for-secure-and-fast-collection-of-doping>

²⁰<https://www.wada-ama.org/en/media/news/wada-executive-committee-approves-technical-document-for-innovative-dried-blood-spot>

in Tokyo to make sure that they are ready for its routine use at the Beijing 2022 Games and beyond.

Under the DBS testing system, small samples are collected from the finger prick (from blood that will be collected as a part of the athlete's biological passport to avoid double constraints for athletes) and blotted on to an absorbent card to analyse the presence of the substance in a more precise way. While it will not replace the current testing system (i.e., urine samples or larger blood samples), following are some of the benefits of DBS testing:

- less intrusive for the athletes;
- easy sample collection;
- cost effective;
- requires minimal space; and
- easily accessible.

c. Sun Yang's Ban reduced by CAS²¹: The Court of Arbitration for Sports has shortened the 8-year ban on Chinese swimmer Sun Yang to 4 years & 3 months. Formerly, he served a 3-month ban in 2014, after testing positive for trimetazidine, a banned stimulant – the 1st ADRV. Yang was found guilty of committing multiple anti-doping rule violations (ADRV) of the 2021 FINA Doping Code (Code) – namely, Art. 2.3 (evading, refusing, or failing to submit to a sample collection by an athlete) & Art. 2.5 (tampering or alleged tampering with any part of doping control by an athlete or other person) – the 2nd ADRV. The reduction in the duration of the ban came after the new Code came into effect from January 2021. Earlier, the panel applying the former FINA Doping Code were bound to impose a unique sanction corresponding to twice the period of ineligibility applicable in the case of a

second ADRV. Under the new Code, however, the panel may impose a ban period based on their assessment of the entirety of the circumstances [Art. 10.9.1.1 of the Code].

²¹https://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_6148_Decision_June21.pdf