PINTÓ RUIZ & DEL VALLE
Lawyers & Economists

NEWSLETTER APRIL 2016

SPORTS

TECHNOLOGY ROLL-OUT IN FOOTBALL

On 5 March, the General Assembly of the International Football Association Board (IFAB), the association responsible for amending the rules of the game of football, passed a number of measures for the experimental introduction of the use of technology in football.

The roll-out of technology consists of introducing an assistant referee who will have access to video playback during the game and who will be able to communicate with the main referee, either at the latter's request or on their own initiative, to review certain decisions that could change the course of the game, such as goals, penalties, direct red cards or mistakes in identifying a player.

The calendar for the roll-out of the technology remains to be defined, but a pre-experimentation phase in controlled (not live) matches has been established, as well as skills and training sessions for referees around the world. With regard to the live experiments, they may be rolled out no later than the 2017/2018 season, and within a minimum of two years, the advantages, drawbacks and worst-case scenarios of the use of video will be studied.

Similarly, the IFAB assembly also passed the new edition of the Rules of the Game, which will come into effect on 1 July 2016. Besides amending some of the rules of the game, the new regulations envisage a clearer wording with the aim of avoiding contradictory interpretations. The new edition will be available next May when the IFAB inaugurates its website www.thefifab.com.

AUDIT

APPOINTMENT OF AUDITORS

The recent approval of the Audit Act 22/2015 has led to the publication of an Instruction by the Directorate General of Registers and Notaries Public (DGRN) with the aim of providing Companies Registrars with guidelines on matters relating to the appointment of auditors. This is due primarily to the lack of adaptation of the Companies Registry Regulations (RRM) to the regulatory changes that have occurred since coming into effect in 1996.

As a requirement for the registration of the auditor, both company law and the new Audit Act set out the inclusion in the audit contract of the fees that will be charged for this work. However, the Act does not specify guidelines for setting the fees of the auditor appointed by the Registrar themselves. In the absence of statutory orientative rates, Article 362 of the Companies Registry Regulations identify the Technical Audit Standards as the only regulation that the Registrar should take into consideration when determining the fees.

As established in Article 344 of the Companies Registry Regulations, after notification of the appointment, the auditor has five days in which to accept the commission. However, the Directorate General of Registers and Notaries Public recalls the supplementary application of the administrative procedure rules and authorises the Registrar to be able to extend the legally established deadline for acceptance, on their own initiative or at the request of the auditor.

One of the new features compared with the previous Audit Act is the introduction of Additional Provision Nine, which obliges Registrars to ascertain whether the auditor seeking registration has the relevant administrative authorisation and if they are registered in the Official Register of Auditors. Similarly, with requests for registration of auditors by organisations of public interest, and due to their special legal and accounting system, the Companies Registrar is authorised to ascertain the effective nature of them, and the compliance with the specialities that the Act attributes to them in terms of the time limitations in the appointment of auditors and their possible extensions.

Another of the new features of the new Audit Act is the duty of collaboration between the Accountancy and Audit Institute and the Directorate General of Registers and Notaries Public, where the former must send the latter a list in February and March every year of the registered trading companies whose accounts have been filed, together with the audit report for the previous six months.

Finally, negative classification notifications must be made in accordance with mortgage regulations and common administrative procedure regulations. For this, the Directorate General of Registers and Notaries Public obliges Registrars to leave a reliable record of the flaws that prevent registration with a view to possible penalties brought by the Accountancy and Audit Institute against the administrators of a company due to a failure to file the annual accounts.

TAX

SUBSIDIARY LIABILITY IN TAX OBLIGATIONS

Article 36 of the General Tax Law 58/2003, of 17 December 2003, sets out who the taxpayers are who are liable for the principal tax obligation and those inherent in it. In addition, the above law decrees a series of suppositions of liability to ensure the collection of the principal obligation.

It sets out that the general rule in the tax sphere is subsidiarity, unless expressly established otherwise. To this effect, we should stress that the sole person liable would only be liable for the principal tax obligation, leaving the accessory charges that may be derived from it outside their framework of obligation.

Consequently, we will now analyse two suppositions of subsidiary liability: in the first place, Section a) of Article 43.1 of the General Tax Law: "(…) the de facto or de jure administrators of legal persons where, having committed tax infringements, the latter have not carried out the necessary actions incumbent on them for the fulfilment of the tax obligations and duties, have consented to the non-fulfilment by anyone depending on them or have adopted agreements that enable infringements. Their liability will also extend to the penalties."

This last element is the one that presents most difficulties as the historical evolution of liability has progressively encompassed increasingly more suppositions, tending towards an objectivisation of it. However, it is not an objective system of liability but one that requires at least for the administrator to have committed the negligence penalised in Article 183.1 of the General Tax Law.

The scale that should be followed to gauge the level of diligence employed by the Administrator is the one known as "diligence of an orderly entrepreneur and a loyal representative".

The second supposition to be analysed is Paragraph b) of Section 1 of the same Article 43 of the General Tax Law, which sets out that: "The de facto or de jure administrators of legal persons that have ceased trading, due to the accrued tax obligations of the latter that are pending at the time of the cease of trading, providing they have not done what is necessary for their payment or have adopted agreements or taken measures causing the non-payment."

As in the previous supposition, three elements can be extracted from the literal wording of the precept that should occur jointly to be able to attribute subsidiary liability. The first of the elements is to be a de facto or de jure administrator of a legal person at the time that the latter ceases trading. It is evident that if the legal entity ceases trading, it runs the risk of not meeting the pending tax obligations. The second element is that there should be pending tax obligations; the tax obligations must be contained in Chapter One of the General Tax law. In other words, that have been or have not been paid, excluding those that have been hidden from the administrator expressly or with bad intent, providing the latter has acted with the diligence inherent to their post. The third and final element is that the organisation ceases trading: the complete and irreversible stoppage, the mere suspension or partial stoppage is not sufficient. In any event, it is important to point out that the appearance of activity is equivalent to cessation, therefore the content of the precept applies.

CONFERENCE ON THE PROTECTION OF MINORS IN FOOTBALL

The Legal Conference on the Protection of Minors in Football was held on 1 March in Madrid, organised jointly by the Sports Law Section of the ICAM and the Spanish Football League. This sees a new collaboration between the two institutions to tackle one of the most pressing problems in the sports law field. The conference focused on the treatment of minors in football due to the significant penalties imposed by FIFA on a number of Spanish clubs and Limited Sports Companies for breaching the rules imposed by this body to try to protect the interests of younger players. For this, the conference featured the presence of the country's leading sports law professionals, including Dr Miguel Cardenal (President of the Spanish National Sports Council), Carlos del Campo (Assistant Director of La Liga) and Emilio García (Head of UEFA's Disciplinary and Integrity Services and CAS arbitrator), also including the participation of a number of academic lecturers, ICAM coordinators and players' agents. This year, lawyer Lucas Ferrer, director of the Pinto Ruiz & Del Valle sports law department, spoke about the system that applies to the international transfers of minors in football, analysing the FIFA regulations relating to the protection of minors, in particular Articles 19 and 19b of FIFA Regulations.

JOINT LIABILITY OF BANKS

On 12 December, the Supreme Court ruled in final instance on the lawsuit that a buyer of a home had brought on 12 November 2010 against the developer and the bank that granted the mortgage to finance it, as well as a surety on the housing estate construction work. The facts of the lawsuit can be summarised as follows:

1) In June 2004, the defendant signed a purchase option contract with regard to a home under construction. The home was part of a development for the construction of which the developer signed a loan with mortgage guarantee with the Caja de Ahorros del Mediterráneo (CAM), which also provided surety for the housing estate construction work. The construction work was not completed on time, so in November 2010 the buyer filed an action against the developer and against the CAM, seeking, among other questions, the joint sentence of both defendants to the repayment of the sums of money delivered.

2) The first instance ruling partially admitted the action, i.e. absolving the defendants of certain petitions of a lesser order in terms of what is relevant to this study, but sentencing the developer and the credit institutions to repay the sums paid in advance and the interest on them.

3) The credit institution lodged a remedy of appeal, which was admitted. The court argued that both Article 1.2 of Law 57/1968 and the jurisprudence that interprets it consider that the obligation of guaranteeing the refund of the sums delivered prior to or during construction lies with the developer, having accredited that in this case a surety was not granted to the developer to this end, nor was a special or separate account opened for the deposit of the sums that the buyer was paying.

4) The buyer-respondent lodged an extraordinary appeal for breach of procedure – which was dismissed – and an appeal to the Supreme Court, which was admitted.

The Supreme Court argues that the jurisprudence on Law 57/1968 is governed by the rigour with which said law protected buyers of homes for residential use, which the Constitution reinforces in Articles 47 and 51.

On the basis of this line of jurisprudence, the Supreme Court concludes that it can only admit the appeal lodged, because "'the liability' that Article 1. 2 of Law 57/1968 imposes on credit institutions not only refutes their nature as third parties outside the relationship between buyer and seller. But rather, **it supposes the legal imposition of a special duty of vigilance on the developer to which it grants the loan for the construction so that the income in the sole account that it has with the institution** is derived to the special account that the developer must open in it or in another institution but, in any event, constituting the guarantee that the corresponding institution should 'demand'."

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