

Proposed Amendment of Chinese Sports Law



by [Emily YU](#)

The author analyzes all new relevant amendments submitted to the highest legislative power of the Chinese Government. According to the author, the new amendments are a considerable improvement towards the professionalization of sports law in China.

On 19 October 2021, the Amendment of Chinese Sports Law was submitted to the 13th Standing Committee of the National People's Congress of the People's Republic of China (the highest organ of state power and the national legislature of the People's Republic of China) for review. It was later released on the official website of the National People's Congress of the People's Republic of China for public opinion from 23 October until 21 November 2021.

Chinese sports law scholars, lawyers and other stakeholders all expect a lot from this new Amendment.

After the Chinese Sports Law was initially enacted and came into force in 1995, decades ago, the landscape of the Chinese sports industry has changed tremendously, and new sports have appeared in the country.

However, the old sports law was left behind to cope with the new challenges imposed by these new realities. Therefore, this Amendment reflects the determination of the Chinese Government to build China as a powerhouse of sports and its willingness to increase its people's awareness of health and fitness.

Some exciting modifications include that all layers of Government must include sports development into its National Economic and Social Development Program; for instance, 8 August of each year is declared as the National Sports Day.

According to the new Law, the State supports the development of the sports industry, perfects sports industry structure, regulates market order, and expands sports market supply and finance channel. Additionally, the State encourages and regulates fitness, competitive performance, sports training, and other related industries, promoting sports and fitness development, culture, traveling, the elderly care, and sports technology industries. It is the Government's obligation to promote the sport by including the investment into the local government's budget. Sports facilities should be free or made accessible at a low cost to the public.

It also emphasizes school's obligation again; as an Asian kid, I still remember how upset I was when my physical education class was often occupied by mathematics teachers, literature teachers and teachers of other "useful" subjects. Finally, it is going to be a mandatory obligation of the school to make sure physical education classes will not be occupied!

Among these new changes, the two most essential parts, which also are the parts this article would like to elaborate are the **new anti-doping** and **sports arbitration** chapters.

Anti-Doping

Previously anti-doping was regulated by departmental regulations and administrative regulations, and there were no law-level regulations.

This year, firstly, through criminal law, some anti-doping conducts are being criminalized. The 10th Amendment of the Criminal Code of the People's Republic of China came into force on 1 March 2021, and for the first time added one article to criminalize the behavior of attempting, inducing, deceiving athletes to using doping substances in national or international big competitions or providing doping substances to the athletes who are going to participate the above-mentioned competitions and causes serious consequences, whoever violates this article might face up to three years imprisonment and monetary punishment. Anyone who organizes and/or forces athletes to use substances for national or international competitions will be regulated by this provision and subject to a heavier punishment.

Article 48 of the anti-doping chapter of the Amendment states that it is forbidden to use any doping substance in sports and any organization and individual shall not provide directly or indirectly doping substances to sports participants. Article 49 clarifies that it is the obligation of the State and all layers of Government to supervise and manage anti-doping activities. Article 50 empowers the Sports Department of State Council to enact anti-doping regulations. Article 51 to Article 54 emphasizes the obligation of all the entities and individuals to cooperate in combating anti-doping and the necessity of increasing public awareness of anti-doping and international cooperation.

Sports Arbitration

Chapter 8 on Sports Arbitration has also been included in the Amendment, according to the original and currently existing. Valid Sports Law of the People's Republic of China, Article 33 states that disputes arising from competitive sports should be mediated and arbitrated by the Sports Arbitration Tribunal, the establishment and scope of which would be regulated by the State Council.

However, the State Council has not established such sports arbitration institutions, which will inevitably cause confusion.

In China, labor contract disputes are mandatory to be submitted to a local labor arbitration tribunal and subject to civil courts if the parties do not agree with the award.^[1] This could work when there were not so many sports disputes and the sports industry just started growing.

Nowadays, the rapid development of the sports industry and the professionalization of sports make the labor arbitration tribunal and courts realize maybe it is better off for the specialized

sports arbitration institution to deal with these disputes. However, there is no legal basis for such sports specialized judicial body.

Take football, for example; the Chinese Football Association (CFA) has its own dispute resolution chamber, *i.e.* the **Chinese Football Arbitration Tribunal**. This internal dispute mechanism knows the football industry, football regulations and FIFA Regulations better than regular courts. Practically speaking, it could be a more suitable judicial body for contractual disputes arising between the player and the club.

But we shall not forget, CFA - legally speaking - is just a non-profitable social organization; it does not have the power like the courts to enforce its award. The reason clubs feel they need to comply with the CFA award is that they want to continue to play within the system. CFA cannot do anything about it once they decide they do not want to play with the industrial rules.

Labor arbitration awards and civil courts, on the other hand, are part of the Chinese national judicial system, so it has the state power to make sure their decisions will be honored and complied with to a maximum level.

Due to this difference and the imbalance of reality and law-making, you can see when some *Chinese Super League* (CSL) clubs encountered financial difficulties, stopped paying football players and dissolved their team. Most foreign players would choose the jurisdiction of FIFA and be subject to appeal to the Court of Arbitration for Sport (CAS), which is less problematic. But for domestic players, the standard contract includes the Chinese football arbitration tribunal as the choice of forum. Use *Liaoning Football Club* as an example: when these players filed a claim before CFA, their claim got refused due to the lack of jurisdiction since these clubs were no longer a member of CFA. The players then went to the labor arbitration tribunal; some tribunals would refuse to take the case, too, due to lack of jurisdiction since the contract chose CFA as the choice of forum, and the disputes arose when clubs were still registered with CFA.

The players then went to the civil trial court, and the trial court sided with the labor arbitration tribunal's award. Until now, most players were devastated by all these processes already. The legal basis of labor arbitration tribunal and trial court dismissing the case was Article 33, that is to say, they consider Chinese football arbitration tribunal as the Sports Arbitration Tribunal, which of course was inconsistent with the Sports Law. Luckily, the appeal court acknowledged this and commanded the trial court to hear the case.

So, the jurisdiction of sports disputes needs to be clarified in order to protect the athletes' rights and legal certainty. This new chapter of the Amendment intends to give clarity to this issue.

Article 76 of the Amendment lists the scope of the jurisdiction of such Sports Arbitration Tribunal, which is:

- 1) disputes over the cancellation of competition results, or suspension of athletes, disqualification of athletes and match ban due to doping violations imposed by sports organizations, athlete management entities or event organizers; and,
- 2) other disputes arising from competitive sports activities.

The contractual and other property disputes between two equal citizens or legal entities and organizations or labor disputes do not fall into the jurisdiction. The technical disputes arising from the competition also cannot be heard by the Sports Arbitration Tribunal.

Most scholars cannot help to show their disappointment with how narrow a gate this is. They believe sports-related labor contracts, image rights contracts, or a sponsorship agreement etc., have their specificities; by excluding "*equal contractual disputes and other property disputes*" and "*labor disputes*", it does not serve the need of the sports industry.

The author understands the concern and their expectation. However, given that the labor arbitration system and commercial arbitration have been existing and functioning quite well in China, is that necessary to exclude sports-related and commercial disputes from the current system and start from scratch? The author is reluctant to give a positive answer, especially since other countries also have a similar approach. For example, in Spain, the disputes between a domestic player and a Spanish football club are mandatory to be submitted to the Supreme Council of Sports or Labor courts, and labor law would be the applicable law.

So, the more urgent problem is not that the new Sports Arbitration Tribunal could not take as many sports-related cases as possible but how all the relevant judicial bodies do their job properly instead of kicking the ball between them.

Suppose the labor dispute does not belong to the jurisdiction of the Sports Arbitration Tribunal, and most of the time, by definition, the contract between a football player and club is indeed a labor contract. Does not this mean the labor arbitration court will have to take the case? Even if the standard contract of CFA puts its internal dispute resolution as a choice of forum, it still does not have the power to exclude mandatory jurisdiction of the labor arbitration tribunal. Maybe CFA should consider the new law and try to clarify its own jurisdiction; for example, it could hear disciplinary-related issues, admission issues, etc., to be consistent with the new Sports Law.

Article 79 encourages sports organizations to establish an internal dispute resolution mechanism, and if such a mechanism does not exist, the party can apply for arbitration. Some sports lawyers interpret this by pointing out such an internal dispute resolution chamber should be the first instance of the case and subject to appeal to Sports Arbitration Tribunal, which makes sense and ideally should be the case. This way, athletes could have a complete body of legal remedies at their disposal. However, the author is not that optimistic, and by interpreting it literally, it looks like the national dispute resolution and Sports Arbitration Tribunal are at the same level, are substitutional relationship.

Since it is still in the process of collecting public opinion, and many scholars have already pointed out this issue, I hope we can see a more precise wording or further explanation in the final version.

Another important point of the Amendment is that it stipulates that the award issued by this Sports Arbitration Tribunal would be final and binding, and the civil courts should recognize and enforce it unless such award misapplies the law or violates public interest.

The new Chinese Sports Law is not perfect; however, it is a new step for Chinese sports law in general; let us wait and see the final version, see how the legislators would balance all the interests and needs.

^[1] More information please see the article "[Termination of an Employment Contract Under Chinese Labor Law](#)" published on Football Legal.