

# Sponsorship Q&A: GdUj

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**Spain**-specific information concerning the key legal issues that need to be considered when entering into a **sponsorship** arrangement.

This Q&A provides country-specific commentary on *Practice note, Sponsorship: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

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## Rights of the sponsor

1. To what extent will a representative appointed by the sponsor to an event's organising committee be liable to a third party who has a valid claim for compensation against the committee?

Generally, a representative appointed by the sponsor will not be directly liable to third parties with valid claims for compensation against the committee. According to the agreement normally governing the relationship between their members, the committee itself is usually liable to a third party with a valid claim for compensation. However, the other members of the committee may be able to recover compensation from the sponsor where the damage was directly caused by some act or omission of its representative-employee. In turn, the sponsor may be able to recover compensation from its representative (*Article 1904, Civil Code*).

## Intellectual property rights

2. What action lies for using an individual's name or image without consent?

Several different actions may be available, depending on the circumstances.

## Use of name or image

The right to one's personal image is recognised as fundamental in the Spanish Constitution (constitutional status provides a special degree of protection). The Organic Law 1/1982 develops this right, together with the right to respect for one's honour and to personal and family privacy, and establishes the conduct that will be regarded as an unlawful invasion of privacy.

Using the name, voice or image of someone for advertising or commercial purposes constitutes an infringement, except when that person has expressly consented to that use. The person who suffers damage from an unauthorised use can obtain immediate legal protection through a civil procedure before the ordinary courts leading to:

- Cessation of the unlawful infringement.
- Prevention of any threatened infringement.
- Provision of compensation for economic and moral loss.
- Recovery of profits gained due to the unlawful infringement.

In addition, an "amparo application" before the Spanish Constitutional Court may be theoretically possible against sentences of lower ordinary courts that could be argued to constitute an infringement of fundamental rights (such as a person's image) when knowing the controversial matter. The "amparo application" is only available as a subsidiary remedy, once all the previous appeals have been exhausted.

## Processing of personal data

The protection of natural persons in relation to personal data (their name or image, among other things) is also considered a fundamental right through the Article 18.4 of the Constitution. This right is developed by means of the Organic Law 3/2018, within the framework of applicable EU regulation (particularly, the General Data Protection Regulation (2016/679)). In the case of personal data processing with no consent, the affected person can ask the data controller to cease in such processing. If it does not succeed, the affected individual can bring a claim before the Spanish Data Protection Agency as the competent body, which can impose sanctions.

## Criminal offences

Under the Criminal Code, the use of an individual's name or image may also constitute an offence of revelation of secrets where a person disseminates, reveals or transfers to third parties images or audio-visual recordings without consent of the affected person, when such images were obtained with consent in a domicile or in any other place out of the sight of third parties, where the disclosure seriously affects personal privacy. This offence is punishable with a prison sentence of three months to one year, or a fine (*Article 197.7, Criminal Code*).

3. Does an intellectual property right or any other proprietary right exist in an event?

No intellectual property or other proprietary right will generally exist in an event itself, as events are, of themselves, not subject to protection under the relevant intellectual property regulations.

However, the underlying event is likely to involve trade marks or copyright, and the name of the event itself can be registered as a trade mark.

## Ambush marketing

4. What remedies does national law or regulation provide against ambush marketing?

There is no law in **Spain** specifically prohibiting ambush marketing. Such practices are not regarded on the face of it as punishable civil offences, except when they may involve the misuse of trade marks or other intellectual property rights.

The official sponsors of an event could in theory invoke:

- The general principle of non-contractual responsibility under Article 1902 of the Civil Code (that is, liability for negligent action or omission).
- Rules regarding unfair competition and dishonest advertising, under Law 3/1991 on Unfair Competition (for example, misleading advertising, the risk of confusion to the audience, or misappropriation of another's reputation) (see [Question 5](#)).

However, interpreting these rules or principles significantly in favour of the official sponsor could imply an unjustified limitation on the freedom of enterprise of an "ambush" sponsor. In most instances, "ambushers" do not use ambiguous expressions, but rather references to general aspects of an event to take advantage of cognitive distortions in the audience. In addition, it is difficult to establish infringement of a company trade mark due to the usual subtlety of ambush marketing.

As a result, there is no case law in **Spain** punishing ambush marketing so far, so the most effective route is to minimise the risk of ambush marketing through the provisions of the **sponsorship** agreement itself. In particular, it could be appropriate to include a specific clause under which the organiser undertakes to make its best efforts to prevent ambush marketing practices (for example, hiding the trade marks of non-official sponsors behind posters and other movable elements, or adjusting the broadcast of the event to show logos or images only of the authorised sponsors).

## Regulatory issues

5. How does national law or regulation regulate **sponsorship**?

While **sponsorship** falls within the definition of an advertising agreement, and so is covered by the laws on advertising, the parties can make their own contractual arrangements, but there are various laws that will affect **sponsorship** arrangements. **Sponsorship** remains a generally unregulated arrangement. This means that the contracting parties have general freedom to configure their relationship as they wish, so long as the agreement complies with compulsory rules of general application, social morality and public order (the principle of freedom of contract is established in Article 1255 of the Spanish Civil Code).

However, there are various national laws and regulations that will have an impact on **sponsorship** arrangements. The most relevant ones are the following:

- **Law 34/1988 on Advertising ("*Ley General de Publicidad*")**. This provides a legal definition of **sponsorship** (one under which the sponsored party undertakes to collaborate with the sponsor in exchange for financial support for the performance of an activity of a sporting, charitable, cultural, scientific or other nature carried out by the sponsored party (*Article 22*)). It specifies that a **sponsorship** agreement is a type of advertising agreement, making it subject to the requirements of the Law on Advertising.
- **Law 3/1991 on Unfair Competition ("*Ley de Competencia Desleal*")**. Any case of unlawful advertising is regarded as an act of unfair competition in **Spain**. For example, the **sponsorship** of cigarettes may fall within the scope of such a law.
- **Law 7/2010 on Audio-visual Communication ("*Ley General de Comunicación Audiovisual*")**. When the **sponsorship** is of a television or radio programme, rules apply to protect the audience and guarantee editorial independence (see [Question 6](#)).
- **Commercial Code and/or Civil Code**. These set out general rules and principles applicable in private law and, particularly, regarding contracts and obligations.
- **Sector-specific rules**. The advertising (including **sponsorship**) of some specific products or services is subject to certain mandatory rules. The most significant ones are those concerning:
  - tobacco (Law 28/2005);
  - medicine (Royal Legislative Decree 1/2015, and Royal Decree 1416/1994);
  - alcoholic drinks (Law on General Advertising, and Law on Audio-visual Communications); and
  - gambling (Law 13/2011, regulating gambling, and Royal Decree 1614/2011).
- **Other specific rules**. Some specific rules issued by federations or similar private associations may also apply in relation to sports **sponsorship**. For example, the LNFP ("*Liga Nacional de Fútbol Profesional*") regulates the size, location and certain other issues relating to advertising on the teams' kit, stadium perimeter, goals or playing field.
- **Self-regulatory codes on advertising ethics**. Autocontrol is the private association responsible for the self-regulation of commercial communications in **Spain**, created to complement advertising regulation and improve the social image of players acting in advertising industry. Among other functions, this entity has established general and sectoral codes of conduct that must be followed by its associates. Autocontrol's membership comprises most of the advertisers, advertising agencies or media and professional associations in **Spain**, as well a very significant percentage of the advertising investment. The Autocontrol codes are binding on all the organisations that accept them.

- **Regional regulations.** Within the framework established as a minimum by the national regulations, each autonomous region in **Spain** ("*comunidades autónomas*") may issue rules developing certain aspects of the national regulations.

6. What obligations or standards do national codes of practice or legislation impose on television and radio **sponsorship**? Consider, in particular:

- Restrictions on who can be a sponsor.
- Restrictions on what can be sponsored.
- Restrictions on the content of **sponsorship**.
- Restrictions on references to sponsors.
- Restrictions on advertising prominence.

The following restrictions apply to television and radio **sponsorship**:

- The sponsor cannot be a company linked to the provision of audio-visual communication services or the production of audio-visual works.
- Information programmes and current affairs programmes cannot be sponsored (that is, news, investigative programmes or coverage of current political and economic issues).
- The audience must be clearly informed about the **sponsorship** at the beginning of the programme, at the end, and at the restart after each advertising break, by means of the name, the logo or whatever sponsor's symbol, product or service.
- The **sponsorship** cannot affect editorial independence or the content of the sponsored programme or audio-visual communication and the broadcasting schedule.
- The **sponsorship** cannot directly encourage the purchase or rental of goods and services, in particular by making special promotional references to those goods or services.

*(Article 16, Law on Audio-visual Communications.)*

In addition, the **sponsorship** itself will constitute an "audio-visual commercial communication" under the Law on Audio-visual Communications, so sponsors should also bear in mind that audio-visual commercial communications must not:

- During the minors' protection schedule (generally, 6.00am to 10.00pm), promote negative self-image messages, such as slimming products, aesthetic surgery or aesthetic treatments.

- Produce any physical or moral damage to minors (the Law on Audio-visual Communications provides examples).
- Violate human dignity or promote discrimination based on protected characteristics; contain political messages, except as electoral messages; use the image of women in a degrading or discriminatory way; use subliminal techniques to advertise surreptitiously; or incite behaviour damaging to the environment, the safety of persons or health. Communications relating to the following products are specifically seen as inciting behaviour damaging to health:
  - cigarettes and other tobacco products, as well the companies that produce them;
  - medicine and healthcare products regarded as psychotropic or narcotic substances, or financed by public funds (that is, where their prices are regulated by the healthcare administration), or needing to be used with medical prescription;
  - alcoholic beverages with an alcohol content higher than 20% when the advert is issued on television;
  - alcoholic beverages below 20%, between 8.30pm and 6.00am (unless an indivisible part of the acquisition of rights and the production of the signal to broadcast), or when the advert is aimed at minors, promotes excessive consumption, or associates that consumption with the improvement of physical performance, social success or health.

7. How does national law or regulation control product placement and editorial **sponsorship**?

The Law on Audio-visual Communications and the Royal Legislative Decree 1624/2011 regulate product placement.

Product placement is defined as any audio-visual commercial communication which includes showing or referring to a product, service or trademark in a programme. The general rules on **sponsorship** of programmes on television or radio also apply in product placement situations – see [Question 6](#).

The definition of product placement under the Law on Audio-visual Communications is that the provider of the audio-visual services carries out product placement in exchange for payment of money or the provision of certain goods or services free of charge such as production props and prizes, with a view to their inclusion in that programme (the goods or services provided in lieu of payment must have a significant value, which will be the case when the amount exceeds by 10% the standard fee applicable to the relevant time zone).

The following restrictions apply in relation to product placement in **Spain**:

- Product placement can occur only in full-length films, short films, documentaries, films and series for television, sport and entertainment programmes.

- When the programme has been produced by the provider of the audio-visual services or one of its subsidiaries, the audience has to be clearly informed about the product placement at the beginning and at the end of the programme, and when it resumes after an advertising break.
- The product placement cannot directly encourage the purchase or rental of goods or services, or imply specific promotions of such products or services or give improper prominence to the product.
- The product placement cannot affect the legal responsibilities or editorial independence of the provider of the audio-visual services.
- Product placement during children's programmes is forbidden.

8. What procedures exist for complaining against **sponsorship**? What sanctions can be imposed for infringements of **sponsorship** codes or laws?

Article 11 of the Law on Advertising establishes that advertising agreements must not include clauses that limit or exonerate the parties' liability to third parties for that advertising.

If the **sponsorship** is unlawful under the Law on Advertising, both consumers and competitors can bring an action under the Law on Unfair Competition to request that the commercial court make an order:

- Declaring the advertising as an act of unfair competition.
- Requiring cessation of the unfair behaviour or forbidding its reiteration in future.
- Rectifying the effect of the unfair behaviour.
- Rectifying the misleading information.
- Ordering compensation for damages arising from the unfair behaviour.

It is possible to bring a claim before Autocontrol asking for the cessation of the **sponsorship** (however, this would be very rare, as most cases brought to Autocontrol would relate to misleading or discriminatory advertising).

Anyone with a legitimate interest (a natural person or a company harmed by unfair advertising, or a consumer association or similar entity representing collective interests) can initiate an action in the case of unlawful advertising (including **sponsorship**).

The affected person or company can also begin proceedings before the administrative body responsible for sanctioning the infringement caused by the illegal advertising. The same proceedings can also be initiated ex officio by the relevant administrative body.

There are other specific administrative sanctions where **sponsorship** breaches a particular law:

**Law on Audio-visual Communications.** The broadcast of commercial communications that promote harmful behaviours for health incurs sanctions from:

- EUR100,001 to 500,000 for TV services providers.
- EUR50,001 to 100,000 for radio services providers.

**Royal Legislative Decree 1/2015 (medicine).** Promotion, provision of information on, or advertising of non-authorised medicines, or non-compliance with the provisions of legislation on advertising regarding medicines, incurs sanctions from EUR90,001 to 1 million for the advertiser.

**Law on Gambling.** The promotion, **sponsorship** and advertising of gambling without authorisation, or infringement of the scope of authorisation, incurs possible sanctions from EUR100,000 to 1 million, and a ban on the activity for a maximum period of six months.

**Anti-tobacco Law.** The promotion, **sponsorship** or advertising of tobacco products incurs sanctions from EUR10,001 to 600,000.

## Competition law

9. How does national competition law affect the terms of a **sponsorship** agreement, for example, the grant of exclusivity?

In principle, the parties are free to contract as they wish as long as the extent or scope of the agreement does not cause an unjustified restriction or distortion in free competition (*Article 1255, Civil Code*).

As a result, there is no issue with granting exclusivity in a **sponsorship** agreement under the Law on Defence of Competition, as long as such exclusivity is duly compensated and limited in time and/or space (the exclusivity cannot last indefinitely).

An exclusivity clause that provides for exclusivity within a specific sector (as in *Standard document, Sponsorship agreement: Cross-border*) is likely to be enforceable in **Spain**. Other types of partial exclusivity may also be permitted, such as allowing two or more sponsors depending on the geographical area where the sponsored party is active. Mutual total exclusivity would be possible if there was a balance of bargaining power between the contracting parties.

It should be noted that the Supreme Court in **Spain** has held that the exclusivity clause must be expressly agreed, and cannot be presumed from other evidence (see, for example, the Sentence of the Supreme Court of 29 March 1990).

## Sponsoring a charity

10. How does national law or regulation regulate the **sponsorship** of a charity?

Aside from the tax perspective (see [Question 11](#)), there are no specific or additional rules regulating the **sponsorship** of a charity.

However, Article 27 of Autocontrol's self-regulatory general code of conduct (see [Question 5](#)) expressly addresses charitable advertising, applying the following requirements to campaigns with a social aim:

- Where reference is made to an advertiser's participation in a charity event or campaign, the advertising should scrupulously respect the principles of truthfulness and good faith.
- The advertiser must disclose the extent of its participation in the relevant charity event or campaign in an explicit and unambiguous way.
- If reference is made to a solidarity-based organisation (meaning one with goals of general interest based on solidarity towards, for example, minorities, people in need, among other things), that organisation's consent must be obtained, and the instructions given by the organisation (or the conditions under which authorisation was granted) must be complied with.

Additionally, some provisions of Autocontrol's sectoral code on advertising of fundraising activities may apply.

11. What tax treatment does national law give the payment or receipt of **sponsorship** funds to or by a charity?

Generally, a charity could receive **sponsorship** funds through the following means:

- Donations, gifts or contributions, with no reciprocal behaviour required from the beneficiary.
- A collaboration agreement ("*convenio de colaboración empresarial*") by virtue of which the beneficiary only undertakes to divulge the name of the contributor, but not assuming an active role in any advertising.
- A formal commercial **sponsorship** with specific rights and obligations.

## Non-reciprocal donations

Where, as in the first point above, the donation is on a non-reciprocal basis, and the charity constitutes a non-profit entity ("*entidad sin ánimo de lucro*"), the amounts paid in **sponsorship** could be tax-deductible for the sponsor

(*Law 49/2002 on Patronage ("Ley del Mecenazgo")*). Among other entities, foundations, associations declared of public interest or non-governmental organisations may meet the definition of a non-profit entity under the Law on Patronage. They must be formally registered as a charity/non-profit entity in order for the sponsor to be able to benefit from this tax-deductibility.

If the conditions are met, the benefactor who makes a non-reciprocal donation is entitled to benefit from a deduction from:

- Its personal income tax or non-resident income tax (if a natural person), to the value of 30% of the sum paid (limited to 10% of the donor's taxable income).
- Its corporate income tax (if a company), to the value of 35% of the sum paid (limited to 10% over its taxable income, but with the ability to carry over the excess for the following ten years).

## Collaboration agreements

A patron can deduct the expenses arising from a collaboration with a charity when calculating the tax base for:

- Personal income tax or non-resident income tax (if the patron is a natural person).
- Corporate income tax (if a company).

A collaboration agreement with a charity is not subject to value added tax as long as it does not imply a supply of services by the beneficiary, as would be the case under a full **sponsorship** agreement.

## Pure sponsorship agreement

Where a pure **sponsorship** agreement is entered into with a charity, the donor may be able to deduct the expenses arising from the **sponsorship** when calculating its taxable income.

The transaction will be subject to VAT at 21%.

## Taxation position of the beneficiary organisation

From the perspective of the sponsored charitable organisation, **sponsorship** funds received by charities are treated as exempt income for corporate income tax if the requirements set out in the law 49/2002 are met (this treatment also includes funds received through a formal "commercial"-type **sponsorship** agreement). This is also the case where commercial services have been supplied to the sponsor (*Article 6.1<sup>o</sup> (a), Patronage Law*).

## Sponsorship of the arts



12. How does national law or regulation regulate **sponsorship** of the arts? Are there any incentive schemes to promote **sponsorship** of the arts?

There is no regulation specifically regarding **sponsorship** of the arts, nor are there any specific incentive schemes in this regard. However, it is common practice for arts **sponsorship** to take advantage of the tax deductibility referred to in [Question 11](#).

## Tax

13. How does national law treat the payment or receipt of **sponsorship** funds? Are **sponsorship** expenses incurred by a sponsor tax deductible?

The funds paid by virtue of a **sponsorship** agreement should be entirely tax-deductible for the sponsor, since such funds are regarded as advertising expenses intended to promote the sale of goods and services or improve the sponsor trademark or image.

When the sponsored party is a commercial entity, it must treat the **sponsorship** funds received as profit (for non-profit entities, the funds would be tax exempt, as discussed in [Question 11](#)).

A sponsor of a commercial entity will have to pay value added tax at the current rate of 21% on the sponsored party's supply of advertising services in favour of the sponsor (this is also the case for non-profit entities, where the arrangement is under a formal **sponsorship** arrangement (see [Question 11](#)).

However, this need not create a higher cost, as it can be factored into the pricing of the amount paid in **sponsorship** fees. The sponsored party will invoice for the advertising services (**sponsorship**) to the sponsor with an additional 21% in concept of VAT. The sponsor will pay the invoice, including the additional 21%. However, at the end of each month or quarter (depending on its turnover), the sponsor will be able to compensate before the Spanish tax authorities such input VAT with output VAT that the sponsor has collected from its clients/consumers during its activity. Therefore, the tax impact should be neutral for the sponsor at the end of the process (the only effect is in respect of a collaboration agreement with a non-profit entity, which pays no VAT, as in a pure commercial **sponsorship** arrangement with a non-profit entity, the sponsor needs to anticipate a VAT payment (see [Question 11](#)).

## Sponsorship agreement

14. Are there any obligations of the sponsored party/club which are typical due to local custom in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: clause 5*)?

The following are typical (though non-exhaustive) obligations for the sponsored party in a standard **sponsorship** agreement in **Spain**:

- To make its best efforts during the development of its activity.
- To serve as an effective vehicle for the sponsor advertising, using the sponsor's trade marks and products as agreed in terms of size, location or visibility on the sportswear or the places where the sponsored activity is performed.
- To make available to the sponsor all spaces and/or means agreed for the advertising (for example, press rooms, equipment, VIP areas, among other things), providing it with this support to comply with the purposes of the agreement.
- To provide access to VIP areas, parking and/or similar hospitality obligations.
- To refrain from making any controversial statements likely to create scandal, offence to public opinion or a similar situation that could bring the sponsor into disrepute (the "behaviour" or "moral" clause).
- To ensure that no employee or professional linked to the sponsored party makes any public statement that might possibly be damaging to the sponsor.
- If applicable, to refrain from entering into **sponsorship** agreements with competitors of the sponsor against the exclusivity or non-compete clauses that may be agreed (no competition law issues arise in relation to this arrangement if the clause is appropriately limited (for example, to the brand's business sector)).

The provisions of *Standard document, Sponsorship agreement: Cross-border: clause 5* would be entirely enforceable under Spanish law. In fact, as a non-regulated agreement (see *Question 5*), **sponsorship** in **Spain** is strongly inspired by the Anglo-Saxon treatment of this area.

15. Are there any obligations of the sponsor which are typical due to local custom in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: clause 6*)?

The most common obligations for the sponsor are:

- To pay the agreed remuneration to the sponsored party (in money, kind or both), including bonuses if applicable.
- To ensure that the advertising related to the **sponsorship** agreement is legal and complies with the intellectual property rights that may be involved.

- To respect the guidelines on the use of the sponsored party's brand and to ensure, if applicable, high standards of quality in the material delivered to the sponsored party.
- To ensure that none of its employees, or any professionals linked to the sponsor make any statements that may be damaging for the sponsored party.
- To exercise its sponsor rights within the specific brand sector agreed in the **sponsorship**.

The provisions of *Standard document, Sponsorship agreement: Cross-border: clause 6* might be enforceable under Spanish law, although an agreement in such terms would probably imply a higher bargaining power on the side of sponsored party than that of the sponsor.

16. Would it be normal practice in your jurisdiction to require the sponsor to give warranties and / or representations with regard to its obligations under the agreement (see *Standard document, Sponsorship agreement: Cross-border: clause 6*)?

**Sponsorship** agreements in **Spain** are non-regulated (see *Question 5*). This means that the parties are free to determine the content of the **sponsorship** agreement, within the framework of law, public order and morals (*Article 1255, Civil Code*). Therefore, the parties' respective bargaining power will be the most important factor in determining whether representations and/or warranties are included in the **sponsorship** agreement.

However, the following representations are standard practice:

- The sponsor ensuring the legality of the advertising.
- The sponsor's compliance with the intellectual property rights that may be involved in the execution of the **sponsorship**.

Additionally, some provisions of *Standard document, Sponsorship agreement: Cross-border* may be accepted under a standard **sponsorship in Spain** (or, in any case, under a **sponsorship** agreement in which the sponsored party has a slight advantage on terms of bargaining power); in particular, those relating to:

- The sponsor's capacity to perform the agreement.
- Limitation of the **sponsorship** to the brand sector.
- Best efforts to avoid any damaging statement for the sponsored party.

*((c), (h), (j), (k), (l), (m), (n) of clauses 6.4 and 6.5.)*

17. What limitations and exclusions of liability might be appropriate (see *Standard document, Sponsorship agreement: Cross-border: clause 11*)?

It should be remembered that the parties must in all cases compensate the other party for any damages caused through:

- Fraud ("*dolo*").
- Negligence.
- Default during the performance of an agreement.

(*Article 1101, Spanish Civil Code.*)

Additionally, the Law on Advertising (which applies to **sponsorship** agreements) specifies that:

- Agreements to which it applies cannot exclude or limit liability to third parties possibly incurred due to the advertising activity (consistent with *Standard document, Sponsorship agreement: Cross-border: clause 11.3*) (*Article 11*).
- A contractual provision is null and void where it is intended to guarantee the economic performance or commercial results of the advertising in a direct or indirect way, or attempting to attribute liability to the other party due to such reasons (*Article 12*).

Within this framework, the parties could modulate their liability or transfer some risks, depending essentially on the bargaining power of each contracting party.

In this regard, the following (or similar) provisions are common in **sponsorship** agreements in **Spain**:

- A cross-indemnity regarding liability for damages to third parties arising from the main business activity of each of the parties or the performance of their contractual obligations.
- Limitation of liability due to a force majeure event (as in *Standard document, Sponsorship agreement: Cross-border: clause 11.2*).
- Limitation of the maximum aggregate liability in the case of non-performance of certain obligations, although the existence or amount of that limit depends on the bargaining power of the parties (it could be drafted as a sum equal to the amount paid as consideration for the **sponsorship**, as in *Standard document, Sponsorship agreement: Cross-border: clause 11.2*, but it could be also a multiple of the amount paid as consideration).
- A statement of the parties' independence and, therefore, that each party retains liability towards its own employees.

18. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to the **sponsorship** agreement (see *Standard document, Sponsorship agreement: Cross-border: clause 17.8*)?

## Jurisdiction

The re-cast Brussels Regulation (*1215/2012*) applies in respect of the jurisdiction of private agreements.

Regardless of their domicile, the parties to a **sponsorship** agreement can choose to apply the jurisdiction of any EU member state, either expressly through the agreement itself, or impliedly by means of the sole appearance of the defendant before the relevant courts.

Where the parties do not choose any jurisdiction, the competent jurisdiction shall be determined as follows:

- With EU-domiciled parties, a person or a company may be sued:
  - in the court of the member state in which that person or company has its domicile (the general forum);
  - or, when applicable, in the member state in which the services were provided (or should have been provided) under the agreement.
- With parties domiciled outside the EU, the Spanish courts will be competent when the obligation which is the subject of the claim was fulfilled or should have been fulfilled in **Spain** (except when a bilateral convention such as Lugano 1988 should be applied; for example, when the defendant is domiciled in Switzerland).

## Law

Regarding the applicable law, the Rome I Regulation (*593/2008*) applies. It establishes that the law applicable to contractual obligations is either:

- The one chosen by the parties.
- Failing any express choice, the law from the country where the provider of the service (the sponsored party in this case) has its habitual residence, except when the agreement is much more closely connected with the law of another country in view of all circumstances.

19. Are there any products which cannot be promoted or have restrictions placed on their promotion in the context of the **sponsorship** of football clubs and in **sponsorship** schemes generally in your jurisdiction (see *Standard document, Sponsorship agreement: Cross-border: Schedule 1*)?

The products that cannot be freely promoted through **sponsorship** in football are the same as those for which Spanish law restricts any type of advertising (see *Question 6*). The Law on Advertising establishes that advertising relating to medical devices, gambling or products likely to generate risks to health may have additional rules imposed, or require administrative authorisation in advance (by sectoral laws specifically regulating this area). The process for obtaining the authorisations (when applicable) is set out in the relevant sectoral regulations.

Regarding tobacco products, there is a prohibition on any kind of advertising, promotion and **sponsorship**, except those carried out for the professionals in that sector and in publications of non-EU countries not aimed at minors (*Article 9, Anti-Tobacco Law*).

Regarding medical devices, there is a prohibition on the advertising of psychotropic or narcotic medicines to be used under medical prescription or financed by public funds (*Article 80, Royal Legislative Decree 1/2015*).

Regarding alcohol, there is a prohibition on advertising of alcoholic drinks in:

- Places where their sale or consumption is forbidden (*Law on Advertising*).
- Any premises hosting sports competitions (*Article 4, Law 19/2007 against violence, racism, xenophobia or intolerance in sport*).

The **sponsorship** of gambling and/or of companies operating in that sector is currently permitted with the relevant administrative authorisation (by the *Dirección General de Ordenación del Juego*, part of the Consumer Ministry) (although there is a draft law at an advance stage in the legislative process which would impose additional limits on gambling advertising).

20. Which regulatory bodies, if any, should be referred to in the agreement?

There is no specific obligation to refer to any regulatory body in a **sponsorship** agreement. However, a **sponsorship** agreement could refer to the self-regulatory body Autocontrol, its general or sectoral codes, and the Autocontrol specialist tribunal on ethics advertising ("*Jurado de la Publicidad*") (see *Question 5*).

21. Are there any compliance obligations on either party under your local laws?

There are no special compliance obligations, besides the obligation to comply with any applicable laws. However, the inclusion of strong compliance wording would be advisable in a **sponsorship** agreement, as the reason for the **sponsorship** (at least, on the sponsor's part) is the association of the sponsor's products or trade marks with the values projected by the sponsored party. Obviously, any scandal or controversial issue affecting the sponsored party may be seriously harmful to the sponsor.

It is common practice for each party to undertake to comply with all applicable regulations, putting special emphasis on infringements or offences usually linked to business activity (that is, bribery and corruption, environmental issues, money laundering or financing of terrorism, among other things). When the sponsored party is natural person (for example, an athlete) the compliance obligations may also be focused on preventing crimes or doping infringements.

In addition, as is the case with [clause 8.1](#), it is standard to specify particular behaviour by the other party which may trigger immediate termination of the **sponsorship** agreement (that is, not only breach of law, but also any specific behaviour which creates dispute). The termination clause should expressly include the breach of any particular law evaluated as likely to be relevant to the particular situation.

22. Does the sponsored party/club need to provide any formal authorisation to the sponsor (such as power of attorney, resolution, or similar document) evidencing the sponsored party/club's authorisation to enter into and perform the agreement?

There is no need to grant a formal authorisation to the sponsor to enable it to perform the **sponsorship** agreement.

There is no legal requirement to prove the signatory's capacity to sign in name and behalf of the sponsored party, but it is highly advisable for the sponsor to check it, to avoid any future questions as to the validity of the authorisation. Indeed, this kind of specific representation is often expressly included in the **sponsorship** agreement.

In **Spain**, it is possible to obtain the relevant information electronically from the Spanish Commercial Registry to check the status of the person signing on behalf of the party (if the agreement is granted before a public notary, such a check is part of the notary's duties).

23. Does the agreement need to be in a language other than English for it to be valid and enforceable? Are there any other formalities which could affect the validity and / or enforceability of the agreement under national law?

Because a **sponsorship** agreement under Spanish law is a non-regulated agreement (see [Question 5](#)), there are no formalities (including language requirements) for its validity or enforceability.

However, in case of an agreement with a double column format to accommodate two languages, it is highly recommended that the agreement should explicitly provide which language prevails in the case of inconsistency, stating that the non-prevailing language is for information only.

24. How does this agreement need to be executed to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

### Execution formalities

There are no execution formalities (see [Question 23](#)). Indeed, this kind of agreement could be oral. However, a written and signed form is strongly advisable for evidentiary purposes.

### Registration formalities

There are no registration formalities.

25. Are there any clauses in [Standard document, Sponsorship agreement: Cross-border](#) that would not be legally enforceable or not standard practice in your jurisdiction?

Under Spanish bankruptcy law 22/2003, a declaration of insolvency in itself will not affect the validity of contracts with mutual obligations pending performance by both parties: these continue unaffected. The court is responsible for deciding whether an agreement should be terminated in light of the general interests involved in the bankruptcy proceedings.

As a result, clauses like [clause 8.1\(d\)](#) which link such proceedings with an automatic termination event are null and void.

The Spanish Supreme Court has held that only a breach of obligations that can be considered essential and likely to frustrate the reasonable expectations or business purposes of the party fulfilling its obligations can constitute an event that justifies termination of an agreement (*see, for example, the sentence of the Supreme Court of 10 September 2012*).

So even if the contract provides for a specific event to be a trigger for termination, this will only actually be effective if that event creates an essential breach. As a result, [clause 8.1\(e\), \(f\) or \(g\)](#) would be unlikely to trigger termination automatically. In our opinion, it is doubtful that a Spanish court would declare the termination of the agreement due to such causes with no reference in the agreement to their essential nature (as the scenarios in these clauses are not likely to frustrate the legitimate expectations of parties when they entered into the **sponsorship**).

26. Are there any other clauses that would be usual to see in a **sponsorship** agreement and/or that are standard practice in your jurisdiction?

The following clauses may be considered as typical clauses under a standard **sponsorship** agreement in **Spain**:

- Priority clause by which the sponsor has a preferential right to be a sponsor again or to sponsor successive events of the sponsored party once expired the agreement.
- Arbitration clause.

## Brexit

27. From the point of view of your jurisdiction, what issues do you anticipate arising in relation to **sponsorship** agreements which either: (i) contain an express choice of English law as governing law; or (ii) have a UK-incorporated sponsor or sponsored party as a counterparty and are governed by the laws of your jurisdiction, in consequence of the UK ceasing to be a member state of the European Union?

**Sponsorship** agreements containing a UK element and an express choice of governing law (whether English or Spanish) should not create any particular issue regarding the enforceability of such a clause before Spanish courts.

If Spanish international private law rules of internal origin had to be applied after the end of the Brexit transition period on 31 December 2020, the situation regarding contractual obligations is unlikely to change, as such rules also prioritise the principle of freedom of choice.

It may be possible (at least theoretically) that Brexit could be regarded as a force majeure event or a material adverse change. Indeed, there is also a possibility the *rebus sic stantibus* doctrine (which enables a court to nullify a contract on grounds of hardship where it becomes impossible to perform) could be invoked if Brexit created a clear imbalance of the parties' obligations which was impossible to predict when the **sponsorship** agreement was signed.

Although it is still difficult to predict, the risks linked to Brexit may include fluctuations in markets or in foreign currencies, and sudden legislative changes, among other things.

28. In relation to any points identified in *Question 27*, would you recommend that any adjustment should be made now to *Standard document, Sponsorship agreement: Cross-border* if it were to be used as an agreement governed by the law of your jurisdiction, in order to address those points in advance?

Due to the anticipated risks, and depending on the particular features of each specific **sponsorship** agreement, it might be advisable to explicitly provide in the agreement that Brexit (or certain specified consequences of Brexit) are force majeure events, or amount to material adverse change.

The agreement could incorporate express mechanisms to enable the parties to evaluate and rebalance the contractual benefits should they be altered by Brexit, allowing for the renegotiation of the agreement before terminating it, to deal with situation within a framework of good faith between the contracting parties.

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