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The Case for Sports Law Arbitration and Practice in Singapore

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As Singapore aspires to domestic excellence and international glory in sporting achievements, its sports administration infrastructure will also have to mature in line with its policy objectives to grow the sporting industry. The area of dispute resolution is ripe for a change to ensure that sports disputes are properly and efficiently managed, given the unique nature of such conflicts. This article will present the current sports scene in Singapore and make the case for the establishment of a framework for sports law arbitration to deal with most, if not all, sports disputes.

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I. Introduction

1 Singapore is a small country with limited natural resources. In its early days of independence, the policy focus was on the growth of niche industries that will sustain the country's existence and ensure its economic survival. Hence, the emphases in the transportation and transhipment service sectors, finance and technology, and now education and tourism activities. It is always the case that with economic prosperity comes a new vision of social realization. Now that Singapore has acquired *de facto* First World economic status on the basis of its per capita income and standard of living, concerns that have previously taken a backseat to economic interests have begun to take on prominence in government policies geared towards the development of a stronger national identity and pride.

2 In the sporting arena, Singapore is beginning to hunger for success and recognition. Sports have never really featured so prominently until only about decade or so ago, and even then it was mostly confined

to a few sports, namely swimming and football. Hitherto, sporting achievements were a poor cousin to other forms of professional distinction and a sportsman's career is relatively short and not well paid. In more recent years, there has been an accelerated drive towards promoting sporting excellence in the form of scholastic,[1] cash[2] and citizenship incentives.[3] There is a clear drive towards making Singapore a force in regional sports events with a view to its debut in the international sports scene. It is not that national pride can be bought, but rather that it can be the reward for an investment well made.

3 Currently, the sports administrative infrastructure in Singapore consists of the Ministry for Community, Youth and Sports ("MCYS"),[4] the Singapore National Olympic Council ("SNOC"),[5] the Singapore

1 The Singapore government and National Sports Associations ("NSAs") offer sports scholarships to promising athletes, which combine education with sports training. It has done so, for example, for promising young swimmers. There was also the recent creation of a Singapore Sports School ("SSS"), and a greater emphasis on sporting achievements as a component of extra-curricular activities that are taken into consideration by schools and universities for undergraduate admission. The SSS website is at <http://www.sportsschool.edu.sg>.

2 An example of the use of cash incentives was the offer of monetary awards to Olympic representatives to the Athens Olympic Games in 2005 where Singapore athletes were offered cash rewards according to the individual's level of achievement up to a million dollars for a gold medal. Cash awards continue to be the norm for sporting achievements at various sporting events such as the recently concluded Commonwealth Games of 2006, which was held in Australia.

3 Citizenship, permanent residency and employment incentives are some of the carrots offered to foreign talents that are tapped to infuse the local "sports economy" with stronger "currency". See "Foreign Talent Remains Part of Sports Scene - Plans to Develop Sports Talents, Including Local Ones" MCDS Press Release, 26 December 2003, available at<http://app.mcys.gov.sg/web/corp_press_story.asp?szMod=corp&szSubMod=press&qid=232> (accessed 6 September 2007). Since its 1993 launch under the "Project Rainbow" project, the foreign talent scheme has reaped results despite the ongoing debate over "imported" versus "home-made" glory.

4 The MCYS was previously the Ministry for Community Development and Sports ("MCDS"), which was in turn previously the Ministry for Community Development ("MCD"). The name changes and the mission statement clearly evidence the more recent emphasis on sports and youth development.

5 The Singapore National Olympic Council ("SNOC") website is at <http://www.singaporeolympics.com>. Its earlier incarnation, the Singapore Olympic and Sports Council ("SOSC"), was founded in 1947. The SOSC received recognition by the International Olympic Committee ("IOC") in 1948 and was registered as a society with the Registry of Societies in Singapore in 1961. It was renamed SNOC in 1970. SNOC selects and coordinates national representation by Singapore athletes in the major multi-sport games, including the Olympics Games,

Sports Council ("SSC"),[6] and the individual National Sports Associations NSAs[7] for each sport as well as a gumbo of other associations, organizations and clubs depending on the sport in question.[8] Those form the national super-structure for sports. As most domestic NSAs derive authority and legitimacy over their sport from their respective international organizations or federations, there is another layer of administration on the international plane. Moreover, even with respect to government-linked sports authorities like the MCYS and the SSC, their necessary involvement with regional and international games, tournaments and competitions, such as the South East Asian Games[9] and the Olympics,[10] require their participation, cooperation and other forms of interaction with the organizations or institutions that govern them.

the Asian Games, Commonwealth Games and South East Asian Games. See also the Singapore Olympic Council Sports website at <http://www.ssc.gov.sg> (accessed 6 September 2007).

6 Under SPEX21, the Singapore Sports Council ("SSC") states its mission as one that is committed to the development of a "sporting nation" and international sporting excellence in Singapore. An ambitious program was set up to realize the Committee on Sporting Singapore's ("CoSS") aim of "becoming one of Asia's leading sporting nations". With that goal in mind, the SSC seeks to address all aspects of sports development (*ie,* athletes, coaches and the sports industry) in its program with the support of the Singapore government. The SSC website is at <www.ssc.gov.sg> (accessed 6 September 2007). The SSC was formed on 1 October 1973 as a statutory board of the Government of Singapore and was established under the Singapore Sports Council Act (Cap 305). It was the result of the merger of the then National Sports Promotion Board ("NSPB") and the National Stadium Corporation ("NSC").

7 A Directory of Singapore National Sports Associations is available at <http://www.singaporesport.com.sg> (accessed 6 September 2007).

8 See, generally, Richard Tan Ming Kirk, "The Regulation of Sports in Singapore" Law Gazette, December 2002 (3).

9 The South East Asian ("SEA") Games were known as the South East Asian Peninsular Games until 1975 when the SEAP Games Federation accepted Indonesia and the Philippines as members. The name was then changed to SEA Games. The state host of the SEA Games is rotated alphabetically by nation name, which removes the politics of bidding for the games, and allows the host country ample time to plan for its turn to host the games.

10 The Olympic Games, which was revived in 1896, is the most well-known international multi-sport event of modern times. However, there are many other multi-sport and single sport competitions. See Daniel Bell, *Encyclopedia Of International Games* (McFarland & Co, 16 April 2003). See also the International Games website at <http://www.internationalgames.net/index.html> (accessed 6 September 2007). See further, Stephen A Kaufman, "Issues in International Sports Arbitration" 13 B U Int'l L J 527 (1995). The writer gives a brief but succinct overview and introduction to the Olympic Movement and the hierarchy from top

4 The regional or international super-structures for sports usually involve an International Federation ("IF"),[11] or a regional body, whether an affiliated sub-organization or independent,[12] for the oversight of every aspect of the sport in question.[13] These IFs or their equivalent will have a comprehensive organizational structure and authoritative documents governing the NSAs, organizations or clubs. The other type of super-structure involve those organizations that administer sporting events, whether single-sport or multi-sport, such as the International Olympic Committee ("IOC"),[14] which is an international games, and the organizers of the Southeast Asian ("SEA") Games, which is a regional games.

5 There is no legislation specifically dealing with sports in Singapore.[15] The rules and regulations on sporting activities in Singapore are set out by the respective sports authority, which can be an international set of rules, a domestic set of rules or a combination of both. For example, for football (or soccer), the rules are set out under the "Law of the Game" produced by the *Fédération Internationale de Football Association* ("FIFA").[16] Domestically, there is another layer of regulations

down (*ie*, the IOC, NOC, IFs, NSAs) as well as on the CAS and the ICAS (and their history).

11 *Eg*, the Fédération Internationale de Football Association ("FIFA") for football (or soccer as it is better known outside of the United States).

12 *Eg*, the Asian Football Confederation ("AFC") for football (or soccer).

13 The General Association of International Sports Federations website is at <http://www.agfisonline.com> (accessed 6 September 2007).

14 The International Olympic Committee website is at <http://www.olympic.org/uk/index_uk.asp> (accessed 6 September 2007). It is an international non-profit organization without political or governmental affiliations. However, it is very powerful as it created and oversees the organization of the Olympic Games and owns the valuable intellectual proprietary rights to the Olympic Games.

15 Sports organizations that are formed as societies or as clubs have to be registered as a society under the Societies Act (Cap 311, 1985 Rev Ed). For example, the Singapore Amateur Athletic Association ("SAAA") is a society under the Act. Where an organization is incorporated under the Companies Act (Cap 50, 2006 Rev Ed), company law will govern that entity just as it would any other legal commercial entity.

16 FIFA has six confederations according to region and the AFC is the governing body of the game in Asia and is the largest of the confederations. A copy of the Law of the Games 2005 is available at <http://www.fifa.com> under "Regulations & Directories" along with other statutes, laws, regulations and guidelines. In Singapore, the NSA is the Football Association of Singapore ("FAS"), which is a member of

for NSAs set out by the government-linked bodies, the Ministry for Community Development and Sports ("MCDS") and the SSC, on 15 February 2003 known as the Code of Governance for National Sports Associations ("the Code"). All NSAs go to the SSC for official recognition and must follow the Code in order for them to obtain funding. These provide for corporate governance and a dispute appeals process under the respective individual NSA.

6 Since all sports are played according to a set of rules and the individual organizations are subject to certain regulations, disputes may follow over whether the rules or regulations have been breached. For example, for domestic competitions, the decision of a referee, umpire or judge may be challenged; a rule or procedure involved in a competition may be flouted with disciplinary consequences for the sportsperson; or contractual clauses between an athlete with the association, organization or club may be invoked in a dispute. Generally, the private NSA or event organizer will deal with matters relating to competition decisions or discipline as well as administer and interpret the relevant rules. In most cases, tribunals, boards or juries are specifically formed to deal with such matters and appeals, if any. The private dispute resolution body must act impartially and independently, and observe natural justice and due process, or its decisions may be challenged in the courts.[17] For contractual disputes, these remain under the purview of the public court system.[18]

FIFA. See the Football Association of Singapore website at <http://www.fifa.org.sg>. Below the NSAs are either organizations or clubs, for example the various Singapore Football Clubs ("FCs"), or the individual sportsperson as the case may be.

17 An example of how a sports tribunal had not met the acceptable standard is the case of *Singapore Amateur Athletics Association v Haron bin Mundir* [1994] 1 SLR 47. The case involved an appeal by the SAAA to the Court of Appeal against a judgment of the High Court that, among others, nullified their decision for the suspension of Haron Mundir. The trial judge had found that the SAAA did not exercise their powers in accordance with the rules of natural justice and had been in breach of those rules in the conduct of their disciplinary proceedings. The Court of Appeal agreed with the trial judge on this point and dismissed the appeal against the judgment nullifying the suspension. In dismissing the appeal, the Court of Appeal said that the function of the court, in relation to the proceedings of clubs, is a supervisory one and confined to the examination of the decision-making process, that is, whether the rules of natural justice had been observed and whether the decision had been honestly reached. It also stated that the court's function was not to review the evidence and the correctness of the decision itself, and that, instead of strictly adhering to the rigid definitions of the rules of natural justice, that is, the rule

7 With the drive towards developing competitive sports in Singapore, the types and number of issues relating to the regulation of sports and disputes between and amongst athletes and sports associations, organizations and clubs are bound to increase concomitantly. There have been such disputes in Singapore, some of which have received media coverage. In particular, disputes involving athletes are mainly contractual disputes, for instance, relating to sponsorship or funding contracts,[19] and foreign talent contracts.[20] For example, a dispute could be over the interpretation of contractual terms relating to the rights and obligations of the parties, such as the athlete's eligibility to participate in events.[21]

II. The need for a domestic sports arbitral body

8 The current dispute resolution mechanisms and processes towards resolving sports disputes are disparate and inadequate. There can also be problems of perception as to the independence and impartiality of a dispute resolution mechanism that is associated with or lies within the

against bias and the reasonable opportunity to be heard, the preferred approach should be that of a duty to act fairly.

18 See Richard H McLaren,"The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes" 35 Val U L Rev 379, 380-381 (2001), on the private contractual aspect of sports law. The article is available at <http://www.sportlaw.ca/mclarenarticlefinal.phtml> (accessed 6 September 2007)

19 *Eg*, in 2003, a dispute over funding arose between an athlete and his NSA. U K Shyam, Singapore's national sprinter, stated that he was too busy to train for the SEA Games because of his medical studies at the National University of Singapore ("NUS") and may not run at the Games. The SAAA issued an ultimatum that if he did not run he would have his funded training stipend from Singapore's Athlete Career and Training ("ACT") program cut off. The stipend covered living, training and education expenses, health insurance, access sports medicine and sport science experts, and career development programs. The grants, which are implemented by the SSC are worth up to $80,000 each and was started in 2001 by the then Prime Minister Goh Chok Tong.

20 There have been some recent reports in the local papers of disputes between foreign talents and their respective Singaporean Sports Association over contractual terms and conditions relating to issues such as retention, citizenship, representation and remuneration. An athlete's benefits are often tied to his performance and problems often arise in this regard.

21 However, other types of disputes such as franchise, joint-venture, and partnership disputes that arises in matured sports jurisdictions or in relation to professional sports arrangements are still relatively rare in Singapore.

sports body that can be an interested party to a dispute. There is a case to be made for the establishment of a domestic arbitration system and procedure tailor-made for sports disputes with limited recourse for international dispute resolution bodies. There are many reasons why arbitration is the most suitable dispute resolution mechanism to resolve sports disputes.

A. Why arbitration

9 There is already a global trend towards promoting alternative dispute resolution ("ADR") processes as complementary substitutes to court litigation in order to better meet the specific needs of the subject matter in dispute and to relieve the burden on the public court system.[22] In some instances, the court system has even incorporated mediation and arbitration into its processes, whether mandated under law or voluntarily through party agreement. In specialized areas of commercial transactions, such as in the construction industry and in the maritime or investment sectors, the use of arbitration to resolve disputes and differences has risen in prominence. Expert arbitrators, often drawn from an experienced list

22 Specifically for sports, alternative dispute resolution mechanisms already exist in, for example, the United States. See the American Arbitration Association ("AAA") Sports Arbitration website at <http://www.adr.org/sp.asp?id=22022> or <http://www.adr.org/SportsOlympic> (accessed 6 September 2007); Canada, see the Canadian Commercial Arbitration Centre ("CCAC") ADR Sports RED website at <http://www.cacniq.org/en/arb_red.htm> (accessed 6 September 2007); and the Sport Dispute Resolution Centre of Canada ("SDRCC") website at <http://www.adrsportred.ca/> (accessed 6 September 2007); Australia, see the National Sports Dispute Center of Australia website at <http://www.anzsla.com.au/nsdc.html> (accessed 6 September 2007); New Zealand, see the Sports Disputes Tribunal of New Zealand website at <http://www.sportstribunal.org.nz/> (accessed 6 September 2007); and Japan, see the Japan Sports Arbitration Agency website at <http://www.jsaa.jp/> (accessed 6 September 2007). See also, the Canadian Centre for Sport and Law website at <www.sportlaw.ca>; and the Australian and New Zealand Sports Law Association website at <http://www.anzsla.com.au> (accessed 6 September 2007). See further, James A. R. Nafziger, "International Sports Law: A Replay of Characteristics and Trends" 86 Am J Int'l L 443, 518 (1996), where the writer noted a worldwide trend toward "more systematic and uniform administration, regulation and dispute resolution"; Gil Fried & Michael Hiller, "Alternative Dispute Resolution Symposium: ADR in Youth and Intercollegiate Athletics" BYU L Rev 631, 635 (1997); and Mary K FitzGerald,"The Court of Arbitration for Sport: Doping and Due Process During the Olympics" 7 Sports Law J 213, 241 (2000), where the writer also endorsed the CAS as "a model for private sports dispute resolution.", at p 242.

of panelists with a credible arbitration institution, have resulted in the consistent treatment of cases and generally fair and equitable decisions, despite the lack of binding precedents under the law of arbitration.

10 The increased use of ADR in general also arose from the desire on the part of disputants to reduce costs, time and expenses; to reach resolutions more suited to their wants and needs (such as helping to maintain amicable relationships); and to reduce the reliance on hard law and the participation of lawyers. Similar considerations apply to sports disputes. It has even been argued that the arbitration system should be extended to resolve tort claims,[23] although this has yet to achieve widespread acceptance. The reality is that in sports, as in many other areas of transaction, alternative dispute resolution has increasingly taken over a "market share" of disputes.[24]

(1) Current system is inadequate

11 Currently, sports disputes are often first dealt with under the internal processes of the NSA. As it is a decentralized system, inconsistencies and arbitrariness are like to arise. Bringing disputes and differences before a body that is part of the structure of, or that is affiliated with, one of the parties also gives rise to problems relating to the real or perceived lack of independence and impartiality of the body in question. "One possible conflict-of-interest problem is…[i]f dispute resolution is largely left up to the sports associations or bodies closely related to them, the body that applies sanctions might be the same as, or

23 Policy implications and considerations come into the picture. See Jeffrey M Schalley, "Eliminate Violence from Sports through Arbitration, Not the Civil Courts" 8 Sports Law J 181 (2001). The writer advocates tort arbitration rather than litigation for reckless or intentional torts by the use of an arbitration clause in contractual agreements between NSAs and their athletes (in the United States, mainly in the collective bargaining agreements context). The idea is that it will incorporate the prevailing standard of care, which will maintain the integrity of the sport, but avoiding the concerns that a court will change the rules of a sport and how it is played. *Contra* Michael Straubel, "Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better" 36 Loy U Chi L J 1203, 1270-1271 (2005), where the writer noted that arbitration may not be suitable for criminal and quasi-criminal cases such as doping cases.

24 See Adam Epstein, "Alternative Dispute Resolution in Sport Management and the Sport Management Curriculum" 12 J Legal Aspects of Sport 153, 155 & 172 (2002).

closely associated with, a party to a dispute."[25] An analogy can be made to the history of the Court of Arbitration for Sport ("CAS").[26]

12 Briefly, the CAS, which was created by the IOC in 1983 to resolve sports-related disputes, faced perceptual problems relating to its independence from the Olympic body. Although members of the sports community did submit cases to the CAS, there were always concerns relating to its close association with the IOC and that it would compromise its integrity. To provide a greater degree of independence for the CAS, the IOC, with the IFs and the National Olympic Committees,[27] did some internal restructuring and in the process created the International Council of Arbitration for Sport ("ICAS") in 1993. The ICAS, rather than the IOC, now oversees the administration and financing of the CAS.[28] The most important difference and the main purpose of that restructuring exercise is that the IOC no longer has direct operational control of the CAS,[29] resulting in greater autonomy, real and perceived, for the latter as a legitimate international arbitration tribunal.[30]

25 James A R Nafziger & Li Wei, "China's Sports Law" 46 Am J Comp L 453, 471 (1998). The writers also noted a "transnational trend toward resolving sports disputes by a combination of administrative review within sports associations and specialized arbitration", at p 454.

26 See the Court of Arbitration for Sports ("CAS") website at <http://www.tas-cas.org>.

27 There are two hundred and two NOCs in five continents, see <http://www.olympic.org/uk/organisation/noc/index_uk.asp>(accessed 6 September 2007).

28 The operational role of the ICAS necessitated substantial revisions to the CAS statutes and rules, which are now combined with the ICAS statute and known simply as the CAS Code. But many of the procedural rules remain the same as before.

29 Nancy K Raber, "Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport" 8 Seton Hall J Sport L 75, 82-83 & 89-90 (1998). For an overview of the development of the CAS from being an entity closely associated to the IOC to one that wields a greater degree of independence, see also, Richard H McLaren, "Sports Law Arbitration by CAS: Is it the Same as International Arbitration?" 29 Pepp L Rev 101 (2001); Richard H McLaren,"International Sports Law Perspective: Introducing the Court of Arbitration For Sport: The Ad Hoc Division at the Olympic Games" 12 Marq Sports L Rev 515, 516-523 (2001); and Anthony T Polvino, "Arbitration As Preventative Medicine For Olympic Ailments: The International Olympic Committee's Court of Arbitration For Sport and the Future For the Settlement of International Sporting Disputes" 8 Emory Int'l L Rev 347 (1994). These articles also support the position that sports law arbitration is, in most instances, preferable to litigation. See also, C Christine Ansley, "International Athletic Dispute Resolution: Tarnishing the Olympic Dream" 12 Ariz J Int'l & Comp Law 277 (1995). The writer also noted the creation of the Supreme Council of International Sports Arbitration and the division of the CAS into two components:

13 Thus, an independently designed dispute resolution system is the key to the avoidance of arguments against the arbitral structure based on a perceived or real lack of fairness and justice.[31]

(2) Shortcomings of court litigation

14 Court litigation is often time-consuming and daunting and it requires legal expertise. For sports disputes where time is of the essence, bringing a dispute to the courts may elicit a solution but it may only be made after the fact and have largely declaratory value. Litigation is also an adversarial process in common law jurisdictions like Singapore and it is most likely to lead to a breakdown of relations between the parties, which may not be what they want, especially if they foresee the possibility of a continuing relationship. Public hearings can also have a negative impact on the reputations, productivity, financing and business relations of the parties involved. Also, in disputes with a transnational dimension, the enforcement of court judgments may be difficult or impossible, depending on the jurisdiction where it is sought to be enforced and the existence of reciprocal bilateral or foreign judgments recognition and enforcement agreements. Likewise, the courts may not in the first place have adjudicatory jurisdiction over an individual residing, or a sport

An Ordinary Arbitration Division, attending to disputes of a private nature from the practice of sport; and an Appeals Arbitration Division, which addresses appeals against the decisions of sports bodies. These changes were made to ensure the independence of the CAS from the IOC. See further, Dimitrios Panagiotopoulos, "Court of Arbitration for Sports" 6 Vill Sports & Ent L J 49 (1999); and Paul H Haagen, "Have the Wheels Already been Invented? The Court of Arbitration for Sport as a Model of Dispute Resolution" available at <http://www.law.duke.edu/sportscenter/haagen.pdf#search='national%20dispute%20resolution%20center%20CAS> (accessed 6 September 2007). The CAS, however, remains closely tied to the IOC, the NOCs and the IFs.

30 Note that currently, CAS has two additional courts in Sydney, Australia (National Dispute Resolution Center, Oceania Region) and Denver, Colorado (United States).

31 For a more in-depth discussion of "dispute system design", see Lisa B Bingham, "Mandatory Arbitration: Control Over Dispute-System Design and Mandatory Commercial Arbitration" 67 Law & Contemp Prob 221 (2004), available at <law.duke.edu/shell/cite.pl?67+...+Probs.+221+(WinterSpring+2004)+pdf> (accessed 6 September 2007). The writer analyzed the importance of parties' self-determination of the process as well as their control in Dispute-System Design.

entity registered, in a foreign country, whatever the scope or extent of its prescriptive jurisdiction.[32]

15 Another important consideration is the court's procedural rigidity as opposed to the greater flexibility that alternate dispute resolution techniques offer. A mediator relies on his powers of persuasion and can exercise creativity in reaching solutions. As for the arbitrator, should the parties so desire they may grant him the power to seek equitable and other non-legal solutions rather than ones based on strict and rigid principles of law. Judges in the courts of law do not have the same freedom. The decision-making flexibility that characterizes alternate modes of dispute resolution makes it possible to take into consideration business interests and thereby adapt the procedure to the specific needs of the parties and the issue at hand. The atmosphere found in alternate dispute resolution proceedings allows for clearer channels of communication between the parties and the forging of bonds of trust with the mediator or arbitrator, which in the end is conducive to finding a reasonable solution to the dispute best tailored to the parties' interests.

(3) The advantages of arbitration

16 But why is arbitration the best choice amongst ADR for the resolution of sports disputes? In contrast to other forms of ADR, it is in the nature of arbitration that a final and binding decision is rendered at the end of the process. Arbitration can also be enforced as a contract under law because it arises out of an agreement between the parties, either before or at the beginning of the dispute, to refer the subject matter of the dispute to the process. On the other hand, mediation and conciliation, for example, are also useful processes for many of the reasons that apply to arbitration but they require the parties' genuine cooperation before, during and after the process, in order to succeed, which may not happen a lot of the time.

17 Arbitration also boasts flexibility of procedures. Parties have the autonomy of putting together a set of procedures streamlined and

32 See Nancy K Raber, "Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport" 8 Seton Hall J Sports L 75, 95 (1998).

tailored to their specific wants and needs.[33] However, as is more likely the case with small to medium-sized disputes, particularly involving individuals, a ready-made set of rules rather than *ad hoc* procedures is preferable not least due to time and cost constraints. Hence, the usefulness of institutional rules, which are recommended and shall be considered in greater detail later.

18 Some arbitral institutions specifically provide for expedited or fast-track arbitration, which is a procedure that allows the parties, when all requisite conditions are satisfied, to procure an award in the shortest possible time and at a lower cost than would be the case if the matter was brought before the courts. To do this, certain changes are made to ordinary arbitral proceedings. These proceedings can provide, among other things, for the appointment of a single arbitrator who assumes responsibility for the decision-making process or for documents-only arbitration. Flexibility even extends to the choice of arbitrators, usually based on expertise and experience.

19 Generally, other than contractual disputes, sports law is less law based and more fact and rule based. Hence there should be a good selection of rules. The applicable rules provision should be flexible enough to allow the parties to agree for decisions to be made on bases other than the law, where it is necessary or expedient to do so. For instance, allowing the arbitrator or tribunal to decide on the basis of, or to consider, recognized and accepted sports practices and customs; or allowing for *Amiable Compositeur* and a decision *ex aequo et bono*,[34] can be a viable option in relevant cases. Arbitration decisions generally cannot be set aside by the courts on the basis of a mistake of fact, and often, even of a mistake of law.

33 Parties also have the autonomy of drafting their arbitration agreement or clause so as to provide for current legal procedures or opt for fast-track procedures as well as to add on "gateway requirements" such as requiring or allowing for mediation or conciliation before arbitration or by granting the arbitrator powers of mediation or conciliation (called "Med-Arb" or "Arb-Med" in the United States). The flexibility of choice in the ways and means of dispute resolution is innumerable.

34 Latin for "in justice and fairness", which means giving the arbitrator or tribunal the power to decide on principles of what is fair and just, not bound by law.

20 The arbitration rules formulated or adopted can keep the costs low and the process expedited, which are often the chief concerns of the parties to these types of dispute.[35] The nature of sport makes expeditious dispute resolution preferable, and sometimes even necessary. This is particularly so for athletes whose career trajectory can be short and whose competition opportunities are linked to, and limited by, competition timetables, game events and age.[36] Hence, for example, in the international plane, *ad hoc* CAS tribunals have been commonly set up and used at International Games (*eg,* the Olympic Games) and Regional Games (*eg,* the Commonwealth Games)[37]. Speedy access and expedited time limits for quick resolution under those rules, for instance, to determine eligibility for participation or matters that arise in the midst of competition or during games time, is important.[38]

21 Arbitration, unlike litigation, affords worldwide implementation under the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention).[39] It thus greatly reduces jurisdiction, recognition and enforcement problems in transnational sports disputes.[40]

35 As ADR are generally less expensive than litigation, it makes dispute resolution available to a greater number of athletes. Most athletes, particularly amateur athletes, cannot afford to spend a lot of time or money on lengthy court litigation.

36 Athletes generally have short careers; hence delays and missed opportunities can have major consequences for them. For example, athletes may lose their only opportunity to participate in the Olympic Games if the selection or submission period has passed. For some sports like gymnastics and swimming, where age is a major factor for optional performance, this can also make a big difference.

37 See Art 28(4) of the Commonwealth Games Federation Constitution.

38 Additionally, by the time a court resolves the dispute, the lawsuit may become redundant. Although an athlete may pursue a subsequent damage claim, courts may be unable to ascertain damages with any degree of certainty. Also personal satisfaction, reputation and glory are difficult to quantify if it is even allowed to be claimed under the law. Not only do economies of time concern athletes, it is often also important for sports organizations; for example, a sports organization may have sufficient funds to conduct litigation, but money and time saved from lengthy litigation can better fulfill its other sport development objectives or mission, such as for the building of training facilities and giving of scholarships. It also has its reputation and resource allocation to consider.

39 The text of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) is available at <http: // www. uncitral. org/ uncitral/ en/ uncitral_texts/arbitration/NYConvention.html> (accessed 6 September 2007).

40 Richard H McLaren, "Sports Law Arbitration by CAS: Is it the Same as International Arbitration?" 29 Pepp L Rev 101, 114 (2001). The writer states that CAS awards will

22 Another increasingly appreciated advantage provided by alternate dispute resolution such as arbitration is in the privacy of proceedings and confidentiality of materials accorded to the parties. In contrast to the open court system, neither the media nor the general public has any right, in the absence of an agreement between the parties or of a specific legal obligation to do so, to sit in on the hearing, to access information or to otherwise obtain disclosure on such matters as the identity of the parties, the arbitrator or tribunal, the issues at hand, the decision and its reasoning, or even to be informed of the existence of a dispute between the parties.

23 Finally, the use of arbitration to resolve disputes in general, and for sports disputes in particular, is consistent with the worldwide trend.[41]

B. Why domestic

24 There are already international dispute resolution systems in place globally for international sports disputes for both non-doping and doping cases, which form the bulk of sports-related disputes globally. The benefits of establishing a domestic sports arbitration system, as opposed to relying on litigation or a foreign or international arbitration body can be assessed in terms of speed, costs, jurisdiction, implementation, recognition and enforceability. Mainly, it does not make sense to send a dispute to the CAS, for example, as a domestic dispute is more likely to be less complicated than an international one, and bodies like the CAS are more relevant for international and complicated disputes. There are also prohibitive costs to bringing matters before international bodies like the

be enforceable as final and binding and only offer very narrow grounds for review under the New York Convention.

41 James A R Nafziger, "Arbitration of Rights and Obligations in the International Sports Arena" 35 Val U L Rev 357 (2001). The writer states that arbitration of disputes relating to international sports competitions is a growth industry. See also, Tracy Lipinski, "Major League Baseball Players Ass'n v. Garvey Narrows the Judicial Strike Zone of Arbitration Awards" 36 Akron L Rev 325, 361-362 (2003). The writer noted that arbitration has become one of the most prevalent techniques of alternative dispute resolution and held out the Garvey case as an example of the extent of the United States Supreme Court's deference to an arbitral decision, although he was ultimately critical of the Court's retention of ambiguous standards of judicial review.

CAS, which may mean that one or more of the disputants, most likely the individual athlete, may end up with no other recourse but to fall back on the internal appeals process of his NSA or the domestic court system.

C. A supplementary role for the CAS

25 Even for domestic disputes or for international disputes submitted to a domestic arbitral institution. The CAS can still retain a useful residual role. Most prominently, it can be viewed as an authoritative advisory body to which certain matters that are not one-off, but which can affect a class of NSAs or athletes, can be sent for an opinion. The referral of disputes or requests for advisory opinions can be done through the NSA via a special administrative or appeals procedure (or after an approval process) or may be taken up by the national sports authorities such as the MCYS or the SSC in certain instances under narrow circumstances.

26 It is to be noted that currently, NOCs and IFs often allow for disputes to be referred to the CAS as the final stage of an appeals process under their statutes, codes and rules.[42] For example, Art 8 of the SNOC Rules[43] and Art 20 of the Statute of the International Hockey Federation ("IHF") provides as such. The CAS and other international dispute resolution bodies remain relevant for the settlement of non-domestic disputes. For example, matters that require taking up by NSAs to the IF level (as IFs has certain degrees of control over NSAs in some matters) or even higher up the hierarchy in order to make fundamental changes to, or statements on, a sport (such as to institute a policy or rule change).

D. Proposed arbitration model and purpose

27 Singapore needs a domestic sports arbitration system that should be the final and binding process to any domestic sports dispute,

42 David B Mack, "*Reynolds v. International Amateur Athletic Federation*: The Need for an Independent Tribunal in International Athletic Disputes" 10 Conn J Int'l L 653 (1995). The writer advocated appeals to the CAS from IFs, at pp 687-693.

43 Under Art 8 of the SNOC Rules, disputes go through three levels of decision making culminating in final and binding arbitration, if it goes that far. First, the Executive Committee (SNOC r 8.1); second, the SNOC EGM (SNOC r 8.2.1); and third, the CAS (SNOC r 8.2.2) in accordance with the Code of Sports-Related Arbitration.

particularly of a contractual or disciplinary nature, which is likely to arise between a NSA and its athletes, coaches and other sports officials and staff. The Singapore arbitration body should be an independent and non-profit organization to ensure its reputation as an objective, independent and impartial entity that offers institutional services and procedural assistance as well as credible arbitrators and tribunals that will not be seen to favour either party, particularly the sports associations and other sports entity *vis-à-vis* the individual.

28 For an arbitration model to be most efficient, the levels of appeal should be kept to the minimum for reasons of time and cost. However, there may still be a use for "gateway processes" such that an initial decision can be rendered,[44] preferably by only one administrative decision-maker or tribunal, before the matter is further taken up to mediation or conciliation before arbitration, or directly to arbitration as the case may be.

E. Main role for the Singapore International Arbitration Centre ("SIAC")

(1) Proposed Singapore sports dispute resolution system

29 Like many countries with advanced dispute resolution systems, Singapore has had an arbitration institution since 1991. The SIAC[45] is an independent non-governmental non-profit organization and performs the usual role and function of such institutions; namely, to administer arbitrations held in Singapore and to offer arbitration rules, which if adopted, will be applied to the arbitration process together with the applicable arbitration law (*lex arbitri*) and in accordance with the parties' arbitration agreement. The SIAC Arbitration Rules were first published in 1991.[46] The SIAC Rules were drafted primarily for use in the conduct of international arbitration, but because there was no domestic arbitration law then, it had been adopted into some domestic contracts. On 1 May

44 A "gateway process" is a first instance dispute resolution procedure that is susceptible to appeal.

45 The SIAC website is at <http://www.siac.org.sg> (accessed 6 September 2007).

46 (2nd Ed, 2 October 1997). Available under the Rules section of the SIAC website. Parties can also adopt the UNCITRAL Arbitration Rules of 1976 for the conduct of arbitration at the SIAC.

2002, the SIAC Domestic Arbitration Rules were published to present a second track regime for the increasing use of domestic arbitration.[47] The distinctions between the two sets of rules also reflect the legal and policy differences in treatment between international and domestic-type arbitration.[48]

30 It is not unusual for matured arbitration institutions to produce more specific rules for use in subject areas that are better tailored to their needs.[49] Beyond producing a set of domestic rules, the SIAC has also formulated the Singapore Bunker Claims Procedure,[50] and the SGX-DT Arbitration Rules.[51] Hence, there is also the potential for a set of Singapore Sports Arbitration Rules to be developed for the resolution of sports disputes through arbitration, if there is indeed a need for specific procedures or rules. This may be the case, for example, to provide for expedited resolution of sports disputes or to allow for limited appeals such as to an international arbitral body like the CAS. Furthermore, although it may not appear immediately necessary, a panel of arbitrators consisting of experts in the field should also be made available in time.[52]

47 (2nd Ed, 1 September 2002). Available under the Rules section of the SIAC website. See also the Guide to Domestic Rules.

48 Singapore has a dual-track regime for arbitration under its laws. The Arbitration Act (Cap 10, 2002 Rev Ed) and the International Arbitration Act (Cap 143A, 2002 Rev Ed) for domestic and international arbitration respectively. There is also the Arbitration (International Investment Disputes) Act (Cap 11, 1985 Rev Ed) for investment arbitration.

49 Other examples of this practice can be found in the United States American Arbitration Association ("AAA") and the Hong Kong International Arbitration Centre ("HKIAC"), which have both produced many sets of rules for specific areas of dispute. See <http://www.hkiac.org/> (accessed 6 September 2007).

50 Jointly formulated by SIAC, the Singapore National Shipping Association ("NSA") and the Maritime and Port Authority ("MPA") of Singapore, the Procedures were designed for the resolution of disputes relating to the supply of bunkers through arbitration. They are available under the Rules section of the SIAC website.

51 (1st Edition, 1 July 2005). This set of rules were designed for the resolution of disputes arising out of derivatives trading between clearing members on the SGX trading floor through an expedited arbitration process. They are available under the Rules section of the SIAC website.

52 It is to be noted that there are currently three panels of arbitrators under the SIAC; A Regional Panel, an International Panel and a SGC-DT Panel for SGX-DT disputes formed on 1 July 2005.

(2) Model: Why not an independent national dispute resolution centre

31 There is no need for a permanent sitting arbitration body. It will be too much of a drain in resources, as it will probably not have the volume of cases that will justify its permanent existence. Singapore's athletic population is still relatively small and the number of sports related disputes, particularly complicated ones, is not expected to be as high as that in countries such as the United States or Canada. Hence, to have a permanent centre for the resolution of disputes, even with an extended research and education mandate, may not be cost effective or necessary, at least in the near future. Neither is there a need at the moment to provide for separate sets of dispute resolution processes for professional and amateur sports nor for non-doping and doping cases, as is the case in some jurisdictions like the United States and Canada.[53]

32 Hence, the SIAC is in the best position to provide the administrative resources and support needed as and when sports disputes arise that the parties have agreed to submit to arbitration. In the United States, for example, the American Arbitration Association ("AAA") is specifically named in the United States Olympic Committee ("USOC") Constitution and Bylaws to administer several types of amateur sports disputes. The three main types of Olympic-related disputes that are resolved through arbitration involve; first, eligibility to compete (eligibility disputes);[54] second, the appropriate National Governing Body ("NGB") for a particular amateur sport (franchise disputes);[55] and third, doping-related findings during out-of-competition testing (doping disputes).[56]

53 Also, different forms of arbitration need not be used for specific disputes unless the parties so choose. Elissa M Meth, "Final Offer Arbitration: A Model for Dispute Resolution in Domestic and International Disputes" 10 Am Rev Int'l Arb 383 (1999). This form of arbitration is also known as "baseball arbitration" or "salary arbitration". However, Singapore's sports scene is arguably still too young to necessitate a set of rules for this form of arbitration as it will probably fall into disuse. See also <http:// www. appealsboardreporter.com/ vdata/11/ nl/86/downloads/ BasebalArb.htm> (accessed 6 September 2007).

54 USOC Constitution, Art IX, 2.

55 USOC Constitution, Art VII, 3.

56 This is the requirement under the Amateur Sports Act, 36 US Code 383. The Constitution provides that the administration of the arbitration will be handled by the AAA, with the Commercial Arbitration Rules applying except as otherwise stated in the Constitution. See also, the American Arbitration Association Supplementary

33 By analogy to the CAS experience, there should also preferably be no involvement or links between either party to the decision-maker or tribunal such as having it as a department of the organization or paid for and staffed by its employees. In order to ensure that the national dispute resolution is perceived as neutral, and for the final decision to be authoritative, recognizable and enforceable, it is strongly advisable to have a dispute resolution process that is independent of any sports organization, or alternatively, to have an ombudsperson ready to assess whether the organization in question meets the needs of athletes.[57] Even if the first stage of a dispute resolution process is sent to an internal organ of an organization, the organization's involvement should not proceed beyond that stage, and certainly not at the final appeals stage of an arbitration process.[58] Again, the SIAC is able to fulfill such a role.

(3) Procedure: What type of process is recommended

34 Because a permanent sports tribunal is not envisioned, the current arbitration rules are sufficient to supplement the parties' agreement as well as the procedures under the Arbitration Act (Cap 10, 2002 Rev Ed) and the International Arbitration Act (Cap 143A, 2002 Rev Ed). A special set of general sports arbitration rules is not necessary. This is unlike the situation in Canada where there is a new arbitration program to resolve amateur sports disputes known as the ADR-SPORT-RED ("ASR").[59] The objective of the ASR program is to offer the Canadian national sports community a permanent ADR system replete with support services to ensure low cost access, independence and impartiality, transparency and accountability, and fairness and equity.

Procedures for the Arbitration of Olympic Sport Doping Disputes at <www.adr.org/sp.asp?id=28627> (accessed 6 September 2007).

57 Jeffrey Benz, "The 1998 Amendments to the Amateur Sports Act" The Sports Law 11 (1999).

58 Even for systems that have "gateway proceedings", the national sports authority (*ie*, MCYS and SSC) should provide oversight to ensure that these are speedily resolved in accordance to reasonable timelines and that there is an avenue of appeal beyond the control or influence of the sports organization concerned.

59 The Canadian ADR Sport Red Code is available at <http://www.adrsportred.ca/tribunal/doc/CodeFinal_E.doc> (accessed 6 September 2007). Other countries that have ADR mechanisms for sports-related disputes are Australia, New Zealand and Japan.

Because it is a permanent body, the Canadian ASR Code is required to establish the body and define its scope and functions.[60]

35 What is important in Singapore, on the other hand, are codes or guidelines on the appeals chain, particularly in relation to time and cost. Hence, the role of the sports authorities (*ie*, MCYS and SSC) in instituting such sports dispute resolution policy is integral. Also important are guidelines for the drafting of the mediation and arbitration clauses or agreement, which should be clear and comprehensive.

(a) One-step or multi-step design?

36 Organizational dispute system designs can take myriad forms, including a single, multi-step procedure culminating in mediation or arbitration; ombudspersons programs giving disputants many different process choices; or simply a single-step, binding arbitration design.[61] On the one hand, a single and final dispute resolution mechanism will be quick and efficient and reduce costs. However, if the decision-maker or tribunal is related to one of the parties to a dispute (*eg,* if it is an internal organ of the organization that is a party to the dispute), an appeals process will provide a safeguard against any perceived lack of procedural and substantive fairness at the first stage.

37 In all likelihood, a multi-step appeals chain design is required. In such an event, preferably one or at most two levels of appeal should be available. Time limits are essential in this case; hence, the parties' arbitration agreement or the arbitration procedural rules or both should provide for time limits for the resolution of the dispute from a point date, preferably a date that cannot be "moved" at the strategic or tactical manoeuvrings of a party (*eg,* the date that the sports dispute arises or the date the first application for dispute resolution is filed according to the first instance procedural rules).[62] The final ADR mechanism must be an

60 See S-2.1 "Access to Arbitration and Mediation" and the definition of "sports-related disputes" at S-2.2 of the ASR.

61 See Lisa B Bingham, "Mandatory Arbitration: Control Over Dispute-System Design and Mandatory Commercial Arbitration" 67 Law & Contemp Prob 221, 221-222 (2004).

62 See *eg,* RA-10 of the ASR. Other than that, most pre-arbitration processes may be left to the regulation and control of individual NSAs or other organizations.

independent one and this should be made clear in the policy or regulatory requirement of the national sports authorities so that arguments against the results of the dispute resolution process on the basis of lack of fairness or justice are avoided.[63]

(b) Mediation or arbitration or both?

38 The parties to a dispute should have the option of more amicable settlement processes such as mediation or conciliation[64] before embarking on arbitration.[65] Because these processes are voluntary and only work if the parties show *bona fides* in reaching a mutually agreeable solution, they should also be voluntary and in accordance with the parties' agreement.[66] The other consideration, however, is the possibility of adopting the American concepts of "Med-Arb" or "Arb-Med" wherein the arbitrator can "switch" roles (*ie,* act as a mediator and then an arbitrator or *vice versa*) during the process of what is largely a single proceeding.[67] Since this procedure is still novel in this part of the world, perhaps, likewise, it should be left to the parties to specifically incorporate it into their agreement if they prefer, rather than to have it as part of the general set of arbitration rules.

63 It can resemble the appeal policies for the various NSAs in Canada except that a single model procedure is preferable taking into consideration the quantity and quality of sports in Singapore as compared to the sophistication and maturity of amateur and professional sports scene in Canada and the United States.

64 In mediation, the parties seek the help of a neutral third party, the mediator, in resolving their dispute themselves. Mediation only serves to resolve the dispute if the parties can come to an agreement with the mediator's active assistance. Conciliation is, in most instances, synonymous with mediation.

65 In arbitration, a neutral third party, an arbitrator, hears each party's presentation of the facts and decides how the dispute is to be resolved. Arbitration resolves the dispute, with or without the parties' agreement. The arbitrator's decision is final; it cannot be appealed.

66 Many processes provides for access to mediation before arbitration. Mediation is another confidential method that is more flexible and less formal than arbitration. In this setting, the parties select a third party whose role is that of a facilitator seeking to assist them in defining the issues and then finding a solution. It is not the mediator's job to decide on the dispute, he is not empowered to do so. The parties are the ones who decide by mutual agreement on the outcome. If the mediation miscarries or fails in whole or in part, the parties remain free to go to arbitration or before traditional courts of law.

67 See Susan Haslip, "International Sports Law Perspective: A Consideration of the Need For a National Dispute Resolution System For National Sport Organizations in Canada" 11 Marq Sports L Rev (2001) 245, 268-270.

39 If the parties agree to mediation, for example as a pre-arbitration requirement, they should provide a time limit for it. Also, the recourse should only be made if the parties are indeed genuine in wanting to resolve matters amicable. In such a case, the Singapore Mediation Centre ("SMC") can provide the facilities and mediators needed.[68] The SMC was incorporated on 8 August 1997, and officially launched on 16 August 1997. It is a non-profit organization guaranteed by the Singapore Academy of Law, and is already currently linked institutionally with many professional and trade associations.[69]

(c) Expedited sports arbitration rules

40 Although general arbitration rules offer a quicker alternative to the litigation process, even speedier procedures called "fast-track" or "expedited" procedures are not uncommon. As we have seen, in the sports world where time is of the essence, this is an especially important alternative that should be strongly considered.[70] One basis for the more simplified arbitral process is that it generally precludes recourse to lengthy hearings and questionings, particularly cross-examinations. It may even constitute documents-only type arbitration. In relatively simple cases where there is no need for experts or witnesses, a quick decision will benefit all the parties. Where the issues in dispute are more complex, however, and require expert testimony, or where a decision may turn on the credibility of a witness, fast-track arbitration may not be suitable. However, it cannot be disputed that giving the parties that option, either to incorporate it as part of its process at the pre-dispute stage or to adopt it when a dispute has arisen, can only be a positive development. In Hong

68 The SMC website is at <http://www.mediation.com.sg/> (accessed 6 September 2007). See also, the Canadian ASR Mediation Procedural Rules under Article RM and RA-12.4 of the ASR. The Canadian Sports Tribunal performs both mediation and arbitration functions.

69 It has the support of the Supreme Court of Singapore, the Subordinate Courts of Singapore and the Singapore Academy of Law.

70 As one author put it, "[m]andatory, binding arbitration may not be a panacea for all the concerns of [all] athletes, but given the unique circumstances of the fast-paced world of sports competition, it may offer the most viable option to quickly settle disputes." See Melissa R Bitting, "Mandatory, Binding, Arbitration for Olympic Athletes: Is the Process Better or Worse for "Job Security?" 25 Fla St U L Rev 655, 678 (1998).

Kong, for example, the HKIAC offers a set of "short form arbitration rules".[71]

(d) A panel of arbitrators

41 Arbitrators with substantive knowledge of sports, such as the application of game rules and disciplinary regulations, are preferable for presiding over a sports dispute than those without such knowledge. The benefits of a "Sports Panel", preferably consisting of local sport experts in different fields that can be tapped for disputes in their respective or related sport, is that they will bring with them their acquaintance with the sport concerned with its distinctive rules and all its idiosyncrasies. Sport-law disputes are largely fact-based and sometimes *de minimis* or minute matters do count in a decision. They require knowledge of the sport in question that a court may not be familiar with or sensitive to. This can in turn contribute to the speed in rendering decisions (*eg,* their knowledge means they need not be educated in the intricacies of the sport during the hearing) and costs (*eg,* there is no need for independently appointed experts). A court decision may be more difficult to enforce overseas than an arbitral award.[72]

42 In Canada, the Sport Dispute Resolution Centre of Canada ("SDRCC") has a Dispute Resolution Secretariat (tribunal) that is led by two co-chief arbitrators and is permanently staffed by a team of highly qualified arbitrators and mediators with experience in alternate dispute resolution and major competitions and games as well as in the intricacies of the local sport system and issues.

71 The HKIAC has a list of specific rules to address subject matter or different time and method of proceeding. See the Rules section of the HKIAC website at <http://www.hkiac.org/HKIAC/HKIAC_English/main.html> (accessed 6 September 2007). It also has documents-only and small claims procedures for maritime-related arbitration.

72 Consider the case of *Reynolds v IAAF*, 112 S Ct 2512, 120 L Ed 2d 861 (1992). See also, Anthony Polvino, "Arbitration as Preventative Medicine for Olympic Ailments: The International Olympic Committee's Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes" Emory Int'l Law Rev 347-381 (1994).

(e) Model mediation and/or arbitration clause or agreement

43 The importance of well-drafted mediation and arbitration clauses or agreement cannot be understated. The foundation of arbitration and all other forms of ADR is party autonomy and choice, and the jurisprudence and literature on court deference to parties' choice of dispute resolution processes and procedures need not be reiterated. Existing standard form contracts between organizations and local and foreign athletes, coaches, trainers and other staff should be redrafted in such a way as to incorporate such clauses which serves their purposes and which, together with internal agreed procedures, conforms with government policies in the form of codes or guidelines.

44 Templates for amendments and future clauses or agreements incorporating mediation and arbitration processes and procedures can be found at most institutions.[73] For the purposes of a mediation or conciliation before arbitration appeals chain, the following prototype clause can be considered with modifications where needed or necessary:

> Any and all disputes or differences arising from, relating to or connected with the present contract can be submitted by either party to [the Singapore Mediation Centre][name of the organization or the mediator or panel] within __ days of the decision of the [first instance decision-maker] or within __ days from the [date the dispute first arose][date of application for dispute resolution] and the procedural rules shall be that [under the SMC procedure and agreement documents][other rules]. The disputes relating to the contract, such as over its interpretation and application, shall be resolved in accordance with [Singapore Law][the rules or law applicable to the mediation].
>
> If the parties do not agree to mediation or if the mediation does not resolve the matter within __ days of mediation, either party can further submit the said disputes or differences to [the Singapore International Arbitration Centre][name of the institution or the arbitrator or tribunal] and the procedural rules shall be that [under the SIAC domestic arbitration rules and the Arbitration Act (Cap. 10)][under the SIAC international arbitration rules and the International Arbitration Act (Cap. 10)][other law]. The disputes relating to the contract, such as over its interpretation and application, shall be resolved in accordance

73 *Eg*, model clauses may be found under the SIAC Rules and the HKAC Rules. The CAS and ASR also offer templates or prototypes of model clauses or agreements for use.

with [Singapore Law][the rules or law applicable to the arbitration] and it shall be final and binding and not subject to further appeal.

45 It is often useful to also insert some additional optional specifications if the parties prefer, including matters relating to the language of the process (oral and written), the location of the process or *lex arbitri* (not the same as the legal venue or *lex situs*), and the procedure for the appointment of the mediator or arbitrator (*eg,* number of appointees, the procedure, and whether required to be selected from a panel, *etc.*). If a lot more such specifications are preferred, the parties or the organization involved may consider creating or using a template agreement rather than a clause, which shall serve the same purpose of referring disputes to the selected forum.[74]

F. Supporting role for domestic and international sports bodies

(1) Role for MCYS and SSC

46 Insomuch as the MCYS and SSC are involved in policies or dispute resolution relating to, for example, Foreign Sports Talents ("FSTs"), they should not be involved in the final arbitral decision-making set-up or process. Otherwise, they are the appropriate oversight bodies to ensure that processes are generally fair and equitable and to ensure system integrity through codes, regulations and guidelines (*eg,* on time limit and layers of appeals (appeals chain) requirements). There should be a role for a sub-entity to perform a function similar to that of the Sports Dispute Resolution Division of the Canadian SDRCC, particularly in relation to education, publication and reporting.[75]

74 An arbitration agreement is also necessary if the parties wish to bypass the internal process of a sports organization and where there was no arbitration clause in the contract, or no arbitration agreement, prior to the dispute arising.

75 *Eg,* dispute prevention functions through availability of resources and information and through education. The SDRCC is a national centre whose goal is to help members of the Canadian sport system to prevent and resolve disputes that may arise between them. To achieve its goal, the SDRCC provides services through two units; the Resource and Documentation Centre and the Dispute Resolution Secretariat. The Resource and Documentation Centre works on dispute prevention; and as its name suggests, the Dispute Secretariat works on resolving disputes between members of the Canadian sport community.

(a) Educational function

47 Currently sports education is conducted under the Singapore Olympic Academy ("SOA"), the education arm of SNOC.[76] An educational function can be served by, for example, seminars and courses for sports organizations and individuals where policies are explained in a manner that are understood by the parties. It can also serve to establish equilibrium in the relationship between sports entities (*eg,* NSOs) and individuals (*eg,* athletes and coaches), and as a means by which to provide systematic recognition and protection of the rights of the individual in all areas. Educating and promoting voluntary agreement to arbitration will also help avoid future challenges to the process and decision on the basis of any lack of real consent.[77]

(b) Resource function

48 The resource function refers to the collecting and collation of decisions of individual sport organizations as well as decisions of arbitrators and mediators. The ability to access this information would be critical to ensure that decisions are fair and that the decision-making structure is perceived to be accountable and consistent by both sports organizations and individuals. For example, an athlete can find out in advance whether the facts relating to a dispute between him and the organization had arisen before and how it had been dealt with in the

76 The Singapore Sports School <http://www.sportsschool.edu.sg> (accessed 6 September 2007) does not merely educate on sports per se but was also created to provide a conducive environment for both education and sports.

77 See Stephen A Kaufman, "Issues in International Sports Arbitration" 13 B U Int'l L J 527 (1995). The writer examined the potential arguments that an athlete may present to the United States courts in order to avoid an arbitral decision made by the CAS (and the possible reception that they may get). The arguments are; first, the CAS fails to provide an independent and impartial arbitration tribunal because of its links to the IOC; second, the discretion of domestic courts to refuse recognition and enforcement under Article V1(e) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("New York Convention"); and third, that consent to arbitration was made with a lack of bargaining power on his part (*eg,* because it was in an adhesion contract), and was thus invalid. The first argument is weakened now by the creation of the ICAS and the Supreme Council of International Sports Arbitration ("SCISA") while the second and third arguments are not foolproof and cases abound, for example in Switzerland and the United States, evincing a reticence on the part of the courts to set aside arbitral awards on these grounds absent a strong basis such as unconscionability.

earlier case so that he can anticipate an outcome and be accordingly guided by it in his decision on how to proceed (*eg,* he could withdraw a complaint or be amenable to settlement). One way to do this is to post decisions online.[78] The use of the Internet as a resource database will reduce costs and allow virtually unlimited and low cost accessibility.

(2) Role for CAS

49 As noted earlier, in certain situations and instances, international arbitral bodies such as the CAS may still be useful, for example, to settle bilateral or international disputes,[79] for the issuance of advisory opinions, and to establish a precedent for a major issue that are expected to arise in future disputes (which will be consistent with international decisions and standards). Guidelines should be drawn up to determine what these situations consist of. The architects of the domestic system should also look at the CAS' administration and rules or decisions for procedural guidance on processes when drawing up its blueprint.

50 The IOC, IFs, NSAs and other organizations that are recognized by the IOC or Olympic Committee Organizing Games ("OCOG") can request an opinion from the CAS concerning any legal issue relating to the practice or development of sports or sport-related activity. An opinion may be published provided that the party requesting the opinion has provided consent in advance for the same. An advisory opinion is not an arbitral award and is not binding. But as it is given by a venerable institution, it will be given due weightage. It is also a useful approach to overcome the bringing of duplicitous disputes over the same or similar issues and to avoid the potential for the proliferation of contradictory decisions in indistinguishable cases, which can convey a sense of arbitrariness.[80]

78 On reporting, see Haslip, *supra* n 67 at 271-272.

79 *Eg*, ordinary proceedings (for international cases) and appeals proceedings (for both international cases and important cases); and only if provided for under agreement.

80 Frank Oschutz, "International Sports Law Perspectives: Harmonization of Anti-Doping Code Through Arbitration: The Case Law Of The Court Of Arbitration For Sport" 12 Marq Sports L Rev 675 (2002). The writer states that the CAS can offer "a unique possibility of international decision making" and "overcomes the traditional multiplication of legal disputes before the state courts of various jurisdictions [that] ensures a certain degree of legal security for both the federation and the athlete concerned."

51 The jurisprudence from the CAS, inasmuch as it is not subject to confidentiality requirements, can be a rich source of non-binding but persuasive precedent in *lex sportiva*. The *lex sportiva* developed by the CAS can provide the appropriate legal jurisprudence to resolve and harmonize the outcome of sports related disputes that arise both domestically and internationally.[81]

III. Conclusion

52 Anticipating the needs of the sports community in every aspect, including the efficient resolution of potential disputes, will create a conducive environment for the development and advancement of sports in Singapore. The creation of a suitable arbitration dispute resolution regime, perhaps bolstered by voluntary processes such as mediation and conciliation is identified in this article as the best way to so do. It is timely to consider incorporating these changes to its sports infrastructure, even as Singapore builds its sports facilities and schools and invests in its next generation of sportsmen and sportswomen, as part of Singapore's holistic strategy and policy to develop its sports talent.

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81 Richard H McLaren, "International Sports Law Perspective: Introducing the Court of Arbitration For Sport: The Ad Hoc Division at the Olympic Games" 12 Marq Sports L Rev 515 (2001). The writer also discussed the *lex sportive* or the issues that the CAS frequently and its jurisdiction in these matters, at pp 524-542. The areas of dispute that the CAS dealt with during the Olympic Games include the following; the jurisdiction of the CAS; affected third parties and national eligibility rules; validity of athlete suspensions by the IOC and IFs; the principle of non-interference with the decisions of sports officials; doping violations and the existence of strict liability regime; the resolution of commercial advertising issues at the Games; and the manipulation of sporting rules for strategic advantage, at p 523. See also, Richard H McLaren,"The Court of Arbitration for Sport: An Independent Arena for the World's Sports Disputes" 35 Val U L Rev 379 (2001).