INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

How to protect the employer's interests after the termination of employment contracts – aspects of labour law in general and sports law in particular

Commission(s) in charge of the Session/Workshop:
Employment Law Commision
IBLC Sports Law Subcommission

London, 2015

National Report of Finland

Riikka Autio
Matti Huhtamäki

Peltonen LMR Attorneys
Fabianinkatu 23
00200 Helsinki
+358 9 4176 030
office@peltonenlmr.fi

General Reporters:

Dr. Hans Georg LAIMER, LL.M. (LSE) zeiler.partners Rechtsanwälte GmbH Stubenbastei 2 // Entrance Zedlitzgasse 7 A-1010 Wien // Vienna Phone: +43 1 8901087-81 E-mail: hans.laimer@zeiler.partners	Dr. Stephan DITTL SALGER Rechtsanwälte PartGmbB Darmstädter Landstraße 125 D-60598 Frankfurt am Main Phone: +49 (69) 66 40 88 251 E-mail: dittl@salger.com

30.1.2015

INTRODUCTION

When signing employment contracts, employers and employees usually do not think about the problems that may arise at the end of such cooperations. However, it is our task as their advising lawyers to protect our client's interests after the termination of such contracts. Therefore we would like to draw your attention on means to protect these interests of employers in general, such as restrictive covenants and garden leave – before we will have a look into the world of sports and see how it deals with respective problems.

1. Employment Law

What are restrictive covenants?

Information is key for the success of every business.

Thus, restricting the use of this information by employees after their employment has ended has proved to be vital to protect the business and/or customer contacts. A former employee having insider-knowledge of the prices, technology, market strategy, customer- or client-base is often an attractive asset to a competitor seeking to enter the market and/or enhancing its existing business.

In order to provide for a certain level of protection for employers they may want to protect the use of the information vital to their business by post termination restrictive covenants.

A contractually agreed restrictive covenant is typically designed to prohibit an employee from competing with his former employer for a certain period after the employee has left the business. Furthermore, it aims to prevent a former employee from soliciting or dealing with customers and or other employees of the former employer by using knowledge of those customers and the business gained during the prior employment.

Standard types of restrictive covenants, which are often used by employers, are:

- non-competition covenant,
- non-solicitation covenant,
- non-dealing covenant
- and non-poaching covenant.

Garden leave

Another opportunity to increase the impact of a post termination restrictive covenant – if lawfully agreed upon - is to agree on a garden leave clause in the initial employment contract. Based on such clause an employer can require an employee to spend all or part of the notice period at home whilst the employee continues receiving the regular remuneration.

Thus, a garden leave clause prevents the employee from taking up other employment with a competitor whilst still being employed with the employer. However, it also enables the employee's successor to establish himself and develop relationships with the employee's (former) customers and contacts. A further advantage of such a clause is that whilst on garden leave, the employee is no longer privy to the business' confidential information. Additionally, it has to be noted that all information such employees do have will become out of date until the garden leave ends.

Finally, at the end of the garden leave period the restrictions resulting from the post termination restrictive covenant may step in and further deter the employee from competing with the business of the former employer.

However, from the employee's perspective such garden leave provision contained in the employment contract, if lawfully agreed upon, may prevent the employee from further practicing (and training) his specific occupation. This may be considered a huge disadvantage when it comes to profession, where actively pursuing your occupation is key (e.g. for professional athletes, surgeons, etc.).

2. The Impact of Employment Law on the World of Sports

In some kinds of sports, athletes and coaches are employed by clubs or associations, so the rules of employment law apply. However, the world of sports has always the tendency to set their own rules of law, claiming that the regular laws are not suitable for the relationships in sports. Therefore we are interested in learning if the above mentioned means of protection the employer's interests at the end of an employment contract are found in sports employment contracts and/or if there are any special provisions in athlete's employment contracts in your jurisdiction..

Transfer Fees

Once upon a time, (football) sports clubs and associations have invented the transfer fee system: If a player wanted to switch the club (the employer) after the termination of his contract, the new club had to pay a transfer fee to the former club. The reason

for this was mainly that the former club wanted to be compensated for the education and the improvements of the player. This was similar to the situation of "normal" former employers who do not want their competitors to benefit from the know-how that a "normal" employee gathered during his employment.

This system had to be abolished in 1995 after the judgment of the European Court of Justice in the "Bosman" case, C-415/93. It was decided that the obligation for the new club to pay a transfer fee after the termination of a player's contract infringe the freedom of movement for workers.

Since then, transfer fees may only be claimed in the European Union, if a player wants to switch the club during the term of validity of his employment contract. Therefore the duration of the contract has become an important aspect of the player's contracts.

Now, how are these issues dealt with in your jurisdiction?

Employment Law

1.1. Restrictive covenants

1.1.1. Is the principle of A POST TERMINATION RESTRICTIVE COVENANT known in your legal system? If yes, how can this principle be defined? Where does the principle have its origin? (Civil Code, case law, etc)

The principle of post termination restrictive covenant is known in Finnish legal system. With a restrictive covenant the parties agree on conditions on which the employee agrees for a certain time period directly or indirectly not to compete, try to compete, engage in or prepare any competing activities with his/her former employer.

Non-competition clause has its origin in the Finnish Employment Contracts Act (in Finnish *työsopimuslaki*, No. 55/2001).

The law does not stipulate non-solicitation, non-poaching and non-dealing clauses but in case law[1] covenants that one way or other narrow employee's possibilities to act in the same line of business as the previous employer have been considered as form of non-competition.

1.1.2. At what stage in the employment relationship between employee and employer are post termination restrictive covenants agreed upon in your jurisdiction? Is there any relevant case law?

Post termination restrictive covenants may be agreed on at any stage of the employment or in a termination agreement but usually they're agreed upon in an employment contract. However, a restrictive covenant must be agreed on in order it to become binding and effective. There is no relevant case law concerning this issue.

1.1.3. Once the employment contract is signed, is there a general obligation of non-compete also in the absence of an express agreement after the termination of the employment? Are there specific statutory provisions or precedents referring to this? Could whistle blowing be regarded as a part of the employee's post termination restrictive covenant?

[1] Finnish Supreme Court 2003:19 concerning non-dealing and non-solicitation

In the absence of an express agreement there is no general obligation of non-compete after the termination of the employment. Finnish Employment Contracts Act sets non-competition obligation only for the duration of the employment and according to the Act post termination non-competition obligation must be agreed on.

The law does not stipulate other restrictive covenants than non-competition and therefore these obligations may become binding and effective before and after termination only by an agreement.

In general, whistle blowing is a rare issue in our jurisdiction. Conditions for restrictive covenants are strict and expanding the scope or conditions would require a precedent from Finnish Supreme Court.

1.1.4. Which obligations regarding post termination restrictive covenants exist on the employer's side in the absence of an express agreement? Are there specific statutory provisions or precedents governing employer's duties after the termination of the employment in your jurisdiction?

There are no obligations regarding post termination restrictive covenants on the employer's side in the absence of an express agreement, and there are no specific statutory provisions or precedents governing employer's duties after the termination of the employment.

1.1.5. What kind of different restrictive covenants that may be available and can be agreed between employer and employee in your jurisdiction? (see the examples in the introduction). Please describe how these can be defined and how they work in your jurisdiction.

General

Only non-competition obligation has been stipulated in legislation, namely in the Employment Contracts Act. Non-solicitation, non-dealing and non-poaching are also available.

Non-competition

Non-competition agreement may limit for a certain period of time and with a threat of sanction the employee's right to conclude an employment contract with a party which engages in operations competing with the employee's employer, and also the employee's right to engage in such operations in any other way on his or her own account directly or indirectly.

Non-solicitation, non-dealing and non-poaching

It is also possible to prevent for a certain period of time and with a threat of sanction the employee from directly or indirectly soliciting and poaching (recruiting) employer's clients or employee's colleagues or from dealing with employers clients.

1.1.6. What are the conditions for a valid post termination restrictive covenant in your jurisdiction? (e.g. prerequisites like minimum age, minimum salary, minimum employment period; way of termination of employment, etc.). Please describe the conditions applicable and how these work in your jurisdiction.

Non-competition

General conditions

According to the Employment Contracts Act agreement of non-competition can be agreed for a *particularly weighty reason related to the operations of the employer*.

According to the Act, in assessing the particular weight of the reason, the criteria taken into account shall include, inter alia,

- the nature of the employer's operations
- the need for protection related to keeping a business or trade secret or to special training given to the employee by the employer
- the employee's status and duties.

An agreement of non-competition does not bind the employee if the employment relationship has been terminated for a reason deriving from the employer.

Other restrictive covenants

According to the above mentioned precedent KKO 2003:19, covenants that one way or other narrow employee's possibilities to act in the same line of business as the previous employer have been considered as form of non-competition, and therefore the conditions for other restrictive covenants are in practice considered to be the same as for non-competition. It should be, however, noted that other covenants than non-competition have not been widely or thoroughly dealt with in literature or case law.

1.1.7. What is the potential scope of a post termination restrictive covenant in your jurisdiction? (e.g. taking into consideration time, geographical scope, content, interest, activities; etc.). Please describe how that

works in your jurisdiction and what pitfalls have to be observed for both employers and employees.

Non-competition

The length of non-competition

An agreement of non-competition may restrict the employee's right to conclude a new employment contract or to engage in competing activities without compensation for a maximum of six months.

If the employee can be deemed to receive reasonable compensation[2] for the restrictions imposed by the agreement of non-competition, a restriction period can be agreed on that extends over a maximum of one year. Reasonable compensation has not been defined in law or case law but usually it is paid as severance payment and the amount is the salary for the duration of the restriction.

Employees considered as directors

What is provided above on restricting the duration of an agreement of non-competition does not apply to employees who, in view of their duties and status, are deemed to be engaged in the direction of the enterprise, corporate body or foundation or an independent part thereof or to have an independent status immediately comparable to such managerial duties.

In practice, non-competition clauses for over 12 months' period are rare.

Other conditions regarding scope of a post termination restrictive covenant

Regarding the scope of a non-competition obligation, Finnish Employment Contracts Act, thus, limits only the duration of the obligation. Other conditions that need to be considered when assessing whether the non-competition obligation is reasonable, are defined in the literature and confirmed in case law. These conditions to be considered are, inter alia, geographical scope, content of the covenant, compensation paid to the employee, employer's interests and the type of prohibited activities.

The assessment is overall and case-specific assessment taking into account the conditions of the particular situation in question.

Pitfalls

A non-competition clause shall be null and void in so far as it is contrary to what is stipulated in the Employment Contracts Act. In other respects, the provisions in the Contracts Act (228/1929, *Legal Transactions Act*) shall apply to the validity and mitigation of non-competition agreements.

[2] Usually non-competition clause for more than 6 months is agreed with higher level directors and compensation for the restriction period is agreed as severance payment.

Pitfall would be not to agree on non-competition clause or on a too narrowly formulated clause since a non-competition clause is null and void only in so far as it is against the law or unreasonable.

Other restrictive covenants

When agreeing on other restrictive covenants, their duration normally follows the duration stipulated for non-competition clause. When assessing whether other restrictive covenant than non-competition may be deemed reasonable, similar issues will be considered (such as geographical scope etc.)

1.1.8. What are the possible sanctions against the employee in the event of a breach of a post termination restrictive covenant? Describe how that works in your jurisdiction and provide for practical information about the dos and don'ts.

Non-competition

Employees not considered as directors

According to the Employment Contracts Act the employee and employer may agree on liquidated damages for a breach of non-competition clause. The amount of the agreed penalty shall not exceed the amount of the employee's salary for the six months preceding the end of the employee's employment relationship.

It is often agreed that employer may also claim for damages exceeding the amount of liquidated damages but the law does not recognize this option.

Employees considered as directors

What is provided above on the maximum contractual penalty does not apply to employees who, in view of their duties and status, are deemed to be engaged in the direction of the enterprise, corporate body or foundation or an independent part thereof or to have an independent status immediately comparable to such managerial duties.

Other restrictive covenants

Normally the sanction for other restrictive covenants is agreed in conformity with non-competition clause.

Dos and don'ts

Since the law gives the opportunity to agree on liquidated damages of fixed amount for every breach, the employer should not agree on damages as compensation.

The law doesn't define what employee's salary for the last six months consists of; does it include fringe benefits, provisions or monthly bonus etc. Therefore it is recommended to specify salary.

Although the maximum contractual penalty does not apply to directors, an excessive penalty may be considered unreasonable and therefore adjusted.

1.1.9. What are the possible sanctions against the new employer in the event of a breach of a post termination restrictive covenant by the employee of the former employer? Is it a matter of unfair competition in your jurisdiction?

The acts of new employer may be considered under Unfair Business Practices Act.

According to Section 1 of the Act, good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business.

According to Section 6 of the Act, an entrepreneur may be prohibited from continuing or repeating practices that violate section 1 or using or revealing business secrets that have been received unlawfully or wrongfully. The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason.

If there is a special reason for this, the prohibition may also be directed at a person in the service of an entrepreneur referred to in the preceding first subsection, or at another person acting on his behalf.

1.1.10. When an employer has invested money in an employee's training, is there any possibility for the employer to get a refund from the employee, in case of breach of the post termination restrictive covenant, and under which conditions?

There is no legislation or case law in Finland regarding this issue.

However, the practice is that the employee and employer may agree or the employer may demand that the employer gets refund for substantial training costs in case the employee terminates the employment or the employer terminates the employment for a reason due to the employee during a certain period after the training.

The possibility to refund is thus not connected with a breach of restrictive covenant.

1.1.11. What are the possibilities of lawsuit for the employee in case of the employer's disadvantagous actions during a period covered by a restrictive covenant (e.g. the employer prevents the employee from finding a new job by spreading out rumours)?

During a period covered by a restrictive covenant, only the employee has obligations towards the old employer.

Unless employer's actions would constitute a crime, such as defamation, the employee does not have practical and effective means to protect him-/herself.

In a termination agreement the parties may have included a provision according to which the parties agree, with a threat of a sanction which may be compensation for damages or liquidated damages, not to act disadvantageously against the other party and undertake not to disclose defamatory statements about the other party. In such case it is possible for the employee to file a compensation claim against the employer if the employer breaches the provision. However, in practice it would be very difficult for the employee to prove the breach and especially the damage caused, and at least to our knowledge such claims have not been filed but such situations have rather been settled.

1.2. Garden Leave

1.2.1. Does the concept of "garden leave" exist in your jurisdiction? How does it work, what is the scope and what are the prerequisites?

The concept of "garden leave" exist in Finnish jurisdiction. Upon giving notice to an employee, the employer can order the employee on garden leave for the whole notice period or part of it. There are no special prerequisites and any employee may be ordered on garden leave.

It is also at employer's discretion whether an employee may keep company's property, such as computer or phone, or have access to e-mail during garden leave.

1.2.2. Talking about garden leave provisions: do employees – or certain types of employees – have a right to be "actively employed" in your jurisdiction, e.g. so that a garden leave provision would not – or not be fully – be enforceable for an employer and the employee would have a "right" to continue working until the end of the employment? What is the respective legal framework in your jurisdiction?

In Finland employees do not have a right to be actively employed.

1.3. Are there any other specific means to protect the employer's interest at the end of an employment contract in your jurisdiction? Please explain in detail and provide for practical guidance.

According to Finnish Employment Contract Act, confidentiality obligation stays in force only for duration of employment unless the employee has received confidential information unlawfully or wrongfully. Therefore it is advisable to agree on confidentiality obligation that stays in force after termination of employment.

The law does not stipulate conditions for confidentiality agreement or scope of such agreement. In practice, confidentiality provisions in an employment agreement are usually for indefinite period and sanction for breaching confidentiality agreement is either damages or liquidated damages or both.

There is no precedent case law concerning confidentiality agreements for the period after the employment. Regarding the scope of such agreement, criminal liability extends until two years after employment has ended and consequently it has been considered that confidentiality obligation stays in force at least for two years.

In addition the companies should take care, preferably also in employment agreement, that all company's property, documents and files are returned upon termination, and that employer has access to employee's e-mail and files upon termination. Employer's right to seek, open and read work-related e-mails requires employee's permission which is advisable to acquire already in employment contract.

2. The World of Sports and Employment Law

2.1. General questions

2.1.1. Does employment law apply to the relation between athlete's and sports clubs/Associations in your jurisdiction? Are there relevant differences between the kinds of sports and between professionals and amateurs?

Employment law, including the primary statute i.e. the Finnish Employment Contracts Act (in Finnish *työsopimuslaki*, No. 55/2001), generally applies to the relationship between athletes/players and sports teams/clubs/associations/organizations/leagues in Finland. The applicability of employment law is well established in Finnish case law with regards to team sports but there is little case law concerning individual athletes and their clubs/associations. In any event, when an athlete agrees by way of a written or oral contract to train, represent and play for a club/association and/or its sponsors for a certain fee or other compensation, this is generally considered an employment relationship to which relevant employment legislation applies. On the other hand, if an individual does sport unprofessionally and with the clear intention of not earning monetary or other compensation for such activity, Finnish employment law does not apply as this type of recreational activity would be considered a hobby instead of employment.

2.1.2. Are there specific employment law provision (statutes, rules of sports associations) applicable for athletes in your jurisdiction? In particular regarding post termination restrictive covenants and/or garden leave provisions and/or the right to continue to work?

In Finland, a specific law applies to athletes regarding pensions and accidents (in Finnish *laki urheilijan tapaturma- ja eläketurvasta*, No. 276/2009, the "**Athlete Pension Protection Act**"), which obligates the sports team/club/association as the employer to provide all player/athlete employees under the age of 43, who annually earns a minimum of 10.980,00 Euros (in 2015), with an insurance for accident and retirement protection as more specifically set forth in the Athletes Pension Protection Act.

With regards to post termination restrictive covenants, garden leave provisions and the right to continue to work, there are no specific provisions in Finnish legislation which would only apply to players/athletes.

2.1.3. Is there a specific court or arbitration system for employment matters between athletes and clubs in your jurisdiction? Are those arbitration proceedings obligatory before going to court?

The Finnish Sports Arbitration Board (In Finnish *Urheilun oikeusturvalautakunta*, the "**Sports Arbitration Board**") is the only instance in Finland with the sole purpose of resolving disputes between athletes and sports teams/clubs and/or their governing bodies i.e. sports organizations/associations/leagues. The Sports Arbitration Board is a body of appeal independent from such parties which, among other things, handles decisions made according to the Finnish (FINADA approved) Antidoping Code on the basis of appeals. Within its competence, the Sports Arbitration Board also functions as a court of arbitration, if an appellant/respondent player/athlete and the sports team/club/organization/association/league in question have agreed to resolve their disputes in such forum, or such a request is made by the appealing player/athlete.

The Sports Arbitration Board was established in 1991 by way of an agreement between the central sports associations in Finland, and its role is to issue decisions in the form of recommendations as to how sports related disputes should legally be resolved in light of the applicable sports club's/organization's/association's/league's rules. The Sports Arbitration Board can receive and process complaints regarding decisions made by sports associations/organizations/leagues, for instance, in the following matters: when the members of sports associations/organizations/leagues are discharged; in cases where a member team's/club's/player's/athlete's rights are limited or they are subject to disciplinary measures by such governing bodies; or when sports associations/organizations/leagues hand out decisions contrary to their own rules.

As the Sports Arbitration Board only issues recommendations, it cannot be compared to a court or an arbitration panel, as the recommendations of the Board cannot be enforced in the way court orders and arbitral awards can. Nevertheless, the Sports Arbitration Board is well established in the Finnish sports scene as the parties involved have adhered to almost all of its recommendations. In part, this is due to fact that most of the central sports associations/organizations/leagues have made a commitment in their own rules to respect the Board's recommendations.

The Sports Arbitration Board can also function as an arbitral panel within its mentioned competence, if the parties involved agree to such a function.

It is voluntary to bring a dispute to the Sports Arbitration Board. Therefore, an appellant/respondent player/athlete is naturally entitled to also bring the dispute directly to the general courts.

2.2. Transfer Fee System and termination of contracts

2.2.1. a) For the EU Member States: Describe how the Bosman case has changed the situation in your jurisdiction and if/how the sports associations and the legislator have responded to this judgement. b) For the NON-EU Members States: Was there a similar judgement or event that changed the system in your jurisdiction?

The Bosman case is recognized in Finland as a part of EU law, and it had a profound effect on Finnish professional sports by effectively prohibiting transfer fees between teams/clubs for the signing of athletes/players out-of-contract. Finnish sports associations/organizations/leagues along with their member teams/clubs did not, however, accept the Bosman case without resistance, and attempted to enforce transfer fees concerning players/athletes out-of-contract on several occasions at least in various team sports during the mid to late 1990s. These attempts led to legal disputes most of which were settled out of court but at least on one occasion such a dispute resulted in a final appellate level ruling by a Finnish court. This ruling by the Turku Court of Appeals (in Finnish *Turun hovioikeus*) in case S 96/1085 on May 2, 1997 deemed it illegal and against the ECJ's ruling in the Bosman case that TPS Turku, one of the most famous ice hockey clubs in the country, had required a transfer fee for the signing/transfer of its former junior player Joni Lehto several years after he had last represented TPS and in circumstances where Lehto was not under contract with TPS.

2.2.2. Are there specific laws or regulations of sports associations (different from the general rules) dealing with the termination of athletes' employment contracts in your jurisdiction? Are such contracts usually open-ended or do they run for a fixed term? Are there any restrictions for fixed-term contracts in your jurisdiction?

Employment contracts involving players/athletes, usually run for a definite or fixed-term in Finland. The parties to such contracts are relatively free to mutually terminate fixed term employment relationships but where they fail to find an amicable solution, the termination of employment contracts should take place in accordance with the general rules of employment law. In addition to the normal legal questions related to one-sided terminations, specific issues tend to arise with regard to player/athlete employment contracts due to the fact that many sports associations/leagues have their

own rules which may in some instances be contradictory to the relevant employment law provisions. According to the standard hierarchy of statutes in the Finnish legal system, employment law naturally supersedes the rules of individual sports associations/organizations/leagues but legal issues and disputes may still arise. Finnish sports associations/organizations/leagues may have stricter rules especially with regards to the transferability of a player's/athlete's playing/representation rights in situations where players/athletes leave one employer to join another. The legality of such rules under employment law is questionable and often a source of debate. This tends to lead to potential disputes between players/athletes and the relevant sports associations/organizations/leagues. For the most part such disputes are settled out of court.

Under the Employment Contracts Act, fixed-term employment contracts are terminated without giving notice at the end of the fixed-term or on completion of the agreed work. As the latter condition rarely applies to the nature of work conducted by players/athletes, their employment contracts are usually "*cancelled*" within the meaning of Chapter 8 of the Employment Contracts Act, if a player/athlete wishes to leave his/her employer before the contractually agreed fixed-term comes to an end. Cancellation of such an employment contract is only possible in exceptional circumstances and under "*particularly convincing grounds*". An employee is entitled to cancel a fixed-term employment contract with immediate effect, if the employer severely breaches or neglects its obligations under the contract or the law and such breach has an essential impact on the employment relationship rendering the continuation of the employment relationship between the parties unreasonable for the employee even for the regular notice period.

If the required preconditions for legally cancelling a fixed term employment contract do not to exist, the employee may be liable to pay damages to the former employer, if he/she illegally cancels the employment contract. According to the Employment Contracts Act, if an employee intentionally or through negligence breaches the employment contract or the Employment Contracts Act or causes a loss to the employer in the course of his/her performed work, the employee shall be liable to compensate the employer for such loss. Employers bear the often burdensome task of proving that they have incurred damages as a result of an employee illegally cancelling a fixed-term employment agreement.

A common source of debate in sports related cases is the fact that according to Finnish law players/athletes should retain control of their playing/representation rights after cancelling the employment contract, regardless of the cancellation's legality. Without such rights the player/athlete in question is not entitled to work for the new employing team/club in accordance with the rules of the governing bodies i.e. sports associations/organizations/leagues. Furthermore, these internal rules normally state that the playing/representation rights of players/athletes under

contract are only released with the originally employing team's/club's and/or the governing association's/organization's/league's prior approval.

As to other restrictions under the Employment Contracts Act regarding fixed-term employment contracts, the employer is prohibited from using consecutive fixed-term contracts when the amount or total duration of fixed term contracts or the totality of such contracts indicates a permanent need of labor. In such circumstances fixed-term employment contracts are deemed to constitute indefinite employment contracts to which different provisions apply with regard to termination and cancellation.

2.2.3. Can a player switch the club during the term of the employment contract for a certain transfer fee without the consent of the former club in the absence of a respective clause? Is it obligatory in your jurisdiction to agree on such a clause and a certain transfer fee?

A player/athlete can transfer between teams/clubs during the term of the contract even without respective clauses to such effect. However, as mentioned above such an athlete/player may become liable for damages, if the preconditions for legally cancelling a fixed-term employment contract are not present as required by the Employment Contracts Act. From an employment law perspective the fees involved in the transfer of athletes/players under contract should, outside of mutually terminated contracts, be regarded as damages incurred by the previous team/club i.e. former employer as a result of the player/athlete cancelling the contract, if the preconditions set forth in the Employment Contracts Act are not present. The amount of such compensation is evaluated on a case by case basis by taking into consideration, among other things, the extent of possible damages, the nature of the breaching act and the circumstances of the parties involved.

Under the Employment Contracts Act, there is no legal obligation to agree on a clause concerning transfer fees etc.

2.2.4. What are the remedies for the former club in your jurisdiction, if a player switches the club during the term of the employment contract without the consent of the former club and without the payment of an agreed transfer fee?

Depending on the internal rules of the relevant sports association/organization/league, the former club may for instance try to argue that the release of the transferring athlete's playing/representation rights is contingent upon the payment of the agreed transfer fee, and take the

matter to the Sports Arbitration Board to obtain a recommendation on the applicability of such rules to the case at hand. In addition, the club may take the matter to general court by filing a claim against the former employee, if the fixed-term employment contract was cancelled illegally and/or the club has suffered damages as a result of the cancellation and/or the employee's other actions. As already mentioned above, an employee may be liable to pay damages to the former employer, if he/she illegally cancels a fixed term employment contract i.e. in circumstances where the required preconditions for legally cancelling such a contract are not present.

2.3. Are there any further conflicts between employment law and the employment practice of sports clubs and associations in your jurisdiction? Please describe relevant cases or judgements.

Employment law and the employment practice of sports clubs and associations regularly conflict but these disputes are normally settled out of court, and thus relevant cases or judgments are rare.