

PRIVATISATION OF SPORTS LEAGUES IN MALAYSIA: GOVERNANCE STRUCTURE AND STAKEHOLDERS RIGHT

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ABSTRACT

Malaysian Super League is now a private single entity. The model of single entity in sports league is being debated recently for its downfall and failure. The professional sports teams in UK and US have also been plagued with cases of debts and insolvency and some are facing a series of bankruptcy proceedings. This raised difficult issues with Malaysia trying to adopt the same privatization model. Thus, significant study and need for a more acceptable privatization governance structural model towards better operation of sports league is conducted. The first part of this paper is to evaluate the adoption of the Australian Media-Leagues model and Limited Liability Partnership model (LLP) that administers and coordinates the operation of the sports league. To protect the stakeholders' right (especially players) and improves the integral relationship between stakeholders and sports organizations, a player allocation schemes that equally distribute talent among competing clubs is designed. The precise line of autonomy between sports organization and the role of mega-media companies as the producer of the products in Media-Leagues model is also defined clearly. The second part of this paper analyses relevant Acts / Statutes and legal mechanisms to validate the status of the Media-Leagues model of sports league in accordance to Malaysian law. The reason is that the operation of professional sports league is not more than just a game but accord satisfaction to both privatized sports league operators and stakeholders. This reduces legal challenge for rights of sales, costs associated with broadcasting and transmission, commercial strategy and anti-siphoning / competition regulations. The research approach is doctrinal and jurisprudential qualitatively reviewing library materials and legal literatures. The doctrinal method is fact-dependent, however, it sets the terms for future resolution of legal disputes in professional sports leagues. The jurisprudential approach covers the social-legal-historical epistemology, positive and moral philosophy of both models of privatization. The result was the more comprehensive privatization model of professional sports league that is able to balance the stronger governance structure and rights of stakeholders in Malaysia.

Keywords: Privatisation, Professional Sports Leagues, Player's Rights, Sports Organization, and Autonomy.

Introduction

Operating a sporting competition or sports leagues requires the application of certain governance principles and strategies. For any team sports, sporting competition or leagues create the opportunity to market their game, generates fan interest and promotion by the media (Roger G. Noll, 2002). The leagues also have great television and broadcasting contracts. The broadcasting companies use professional sports leagues as their most important channel to sell commercial time (Gregor Lentze, 1995) (King, P., 1995). All these will give advantages to the team sports as well as the sporting industry of the country.

In order to ensure such competition runs smoothly and at the same time uphold the stakeholders' rights, getting the best governance structure is vital for sports associations or any league's management. The adoption of governance structure depends firstly on the sports system in the respective country (Dr Thilo Pachmann, 2013). Among the governance structures that may be applicable for organizing sports leagues are organizational form of the professional sports leagues model, the leagues commissioner model, the traditional commissioner model (Gregor Lentze, 1995), club based private property structure, single-entity centrally-planned structure, mixed-mode centrally-planned structure or mixed-mode private property structure (Marc Edelman et al, 2009), media-league structure (James B. Perrine, 2002), and limited liability partnership structure (Frances Po and Pauline Lum. 2013).

The current model of single entity in sports league adopted in Malaysia, is being debated recently for its downfall and failure. The professional sports teams in UK and US have also been plagued with cases of debts and insolvency and some are facing a series of bankruptcy proceedings by applying such model. This raised difficult issues with Malaysia trying to adopt the same privatization model.

Thus this paper objectively discusses an initial study for a more accepted privatization governance structural model towards better operation of sports league in the Malaysian context. The first part of this paper is to evaluate the current model for football leagues in Malaysia and its challenges. The second part is to examine the possible adoption of the Australian Media-Leagues model and Limited Liability Partnership (LLP) model that administers and coordinates the operation of the sports league.

The approach used for this research is doctrinal and jurisprudential that qualitatively reviewing library materials and legal literatures. The doctrinal method is fact-dependent, however, it sets the terms for future resolution of legal disputes in professional sports leagues. This design is likely to be more accepted as it have the character of legal research where doctrinal research also known as pure theoretical research, focuses on the nature of law, legal authority and the theories behind particular substantive areas of law (McConville and Wing, 2007) (Minichello, V et al., 1995). The jurisprudential approach covers the social-legal-historical epistemology, positive and moral philosophy of both models of privatization. The result was the more comprehensive privatization model of professional sports league that is able to balance the stronger governance structure and rights of stakeholders in Malaysia.

Current Model for Football League In Malaysia

The Malaysian Football Association (FAM) is the governing body for football in Malaysia. As a registered national association under the Sports Development Act 1997, FAM has responsibility to manage the Malaysian National Football team and organise the major football and futsal tournaments within the country. FAM also has the sole power to organize and arrange the Malaysian football league. FAM receives their budget from government and other partner-sponsors to run their football activities.

The Malaysian league competition has begun since 1979, involving representatives from qualified football associations registered under the FAM at State and club levels. Over the years, the league competition has gained important status in its own right. The practice in organizing football league in Malaysia is based on a single entity sports league model where basically it involves a separate entity, the Malaysian Super League Sdn. Bhd (MSL), that house all the league's teams.

Under this type of league model, the investors own divided interest in this entity (MSL) whereby they have two roles, firstly, they are responsible for financing and secondly, operating the entire league, whilst still under the control of the football governing body (FAM). Marc Edelman et al (2009) mentioned a single entity sports league model is a type of sports league in which the league investors share all the property rights in common.

MSL's primary function is to raise sponsorship funds to further the interest of football. With a yearly season of over 1,000 scheduled matches, MSL has a solid platform for sponsors and advertisers to create brand awareness among the masses (Football Association Malaysia, 2015).

Under the current practice of management for football league in Malaysia, through the application of this league model, FAM with the assistance of MSL will open bids to the media to broadcast live coverage of football league. As a reward, the highest bidder will be awarded the broadcasting rights for an agreed period. In return, the FAM will get financial sponsorship for the purpose of organizing professional football league in the country. In addition, through the financial sponsorship, FAM will distribute certain portion thereof to the affiliate's members who are the clubs that will participate in the professional football league. Funds provided will be used by clubs to enhance the progress and performance of the players, to buy international players and professional coaches, to cover the costs of training and so on.

The Impact of Current Model for Football League in Malaysia

Organizing football league in Malaysia is 100% under the supervision and control of FAM. The practice of governance structure for football league in Malaysia seemed to have problem with the level of legal protection for the stakeholders, organizations, sponsors and the media. For example, any media companies bidding for broadcasting rights need to undergo a process set by FAM.

Previously, Astro Malaysia Holdings Bhd (Astro), a leading integrated consumer media entertainment group in Malaysia and Southeast Asia; solely held the broadcasting rights for domestic football until the end of 2014. Astro has previously created one channel for live broadcast of football matches and provided the latest progress report on Malaysian football. This shows the media rights have been monopolized by one Media Company.

For 2015, FAM has brought in MP & Silva Pte Ltd, a Singapore based media Rights Company that owns, manages and distributes sports media rights; as partners to advise on media related matters. The broadcasting rights for the football league have yet to be sold to any local TV station and this has lead to the protest by fans who are unable to attend matches at the stadium.

It is a known fact that in football leagues, media rights revenues is big business. Therefore, the current monopoly of such media rights in Malaysia result in a lack of opportunity for new media distribution networks to bid for such rights.

In the context of professional football league in Malaysia, FAM as the governing body has the power to make broadcasting arrangement where the profits are divided among stakeholders and affiliates involved with FAM. However, in

reality, there are still complaints from the affiliates of FAM that they did not receive a fair return for their participation in the football league. As a result, the football club teams competing in the league have to on their own spend large allocation of money for the development of their players which is estimated to be in the range of RM1 million and RM2 million per year (Awani News, 2015).

This is one of the main reasons why players and coaches' salaries are not paid. This result in poor performance and affects the quality of players playing in the professional football league, hence the league becomes weak.

Another consequence is the negative impact in the development of football in Malaysia, where it is difficult to locally produce talented and professional football players. It also generates a lot of speculations and negative perceptions from the public, in particular the fans and supporters of the football industry. This illustrates the lack of legislative protections accorded to the stakeholders involved which could cause a negative impact on the development of football industry in Malaysia.

Privatisation

Privatization basically includes methods which change the nature of relationships between public and private sectors. In theory, privatization is a series of measures within the framework of which the control, ownership or management in various levels and fields are taken from the public sector and are transferred to the private sector (Kay, J and Thompson, 1986). This kind of situation then limits the scope of the direct influence of government on economic operations and at the same time, the decentralisation of activities on private sector increases.

The primary objective of privatization is to reduce the scope of direct involvement of the government in an institution's economy. In common, it is also objectively used to obtain revenue for the government in order to cover the budget costs, releasing the budget from the financial load of the companies which bring loss and reducing the amount of domestic and foreign liabilities of the public sectors. The secondary objective of privatization is to increase the participation of people in economic affairs and appropriate decision-making as well as the distributing shares among stakeholders. (Ghasem Rahimi et al, 2013).

The sports industry is not exempted in this regard. In many countries, the clubs or sporting associations' traditional structure has been changed, and due to commercialization, privatization has been seen as the best way to achieve higher independent profit making and attract more business.

Media-League Model

To overcome the current Malaysian football league problems and to increase the legal protection accorded to the stakeholders, sports organizations, sponsors and media, privatization of the league through the Media League Model (MLM) is important. A media league is defined as an 'in-house' production by a mega-media company of a competition among professional sports teams. Known also as a media ownership of professional sports teams (Trevor Slack, 2004), it represents a mega-media company's vertical integration of content origination of professional sports league programming into the other stages of "broadcasting" production. Through the creation of a media league, the mega-media company become as producer or as the owner of the media league (James B. Perrine, 2002). This is in contrast with the practice in traditional league where the media is the purchaser of the products of a professional sports league.

A special characteristic of MLM is that every aspects of the professional sports league are being controlled by the mega-media company. Accordingly, all the functions of a central competition organizer, league office and transmission rights for the league, are now under the control of the mega-media company. This is including the intellectual property and transmission rights for the league and clubs (James B. Perrine, 2002).

The media league is also based on the concept of "parent/subsidiary" media league whereby under such league, the mega-media company is considered as a parent and the individual clubs and the "central competition organizer" are considered as the subsidiaries. The latter is given the authority to administer and coordinate the league competition. However, the parent mega-media company has the ultimate authority over all league policies and affairs.

The MLM may also be able to solve the problem in relation to the loss of competitive balance arrangement. The loss of competitive balance arrangement will give effect to the fans especially in relation to the result of the football league because it can be expected early. One of the reasons for this is that the rich clubs are able to buy skillful, talented and high quality player compared to the poorer football clubs. This situation may eventually lead to an uninteresting football league. Through the application of MLM, the parent company has power to sign up the players and then use a draft system to distribute the players to the various clubs. In such situation, a tiered salary structure based on players' skills will be created by the mega-media company and then, they will sign up a certain number of players in each salary category (James B. Perrine, 2002).

In relation to players' allocation scheme, under the MLM, the mega-media company has the power to decide on how much to spend on a particular player, instead of the individual clubs. To promote reasonable balance in such a league, a mega-media company may choose from a number of different arrangements. Basically, there are two methods that can be applied for player allocation scheme. In the first method, the parent company may grant each subsidiary club an equal amount of funds with a fixed amount designated for signing in players and another fixed sum to operate the team. Under this scheme, it requires either

the parent company or the subsidiary central competition organiser to enforce a salary cap. To ensure the clubs' adherence to the cap, the mega-media company need to spend certain sums to monitor its implementation.

In contrast to the first method, in the second method the mega-media parent company may allocate each club subsidiary a lump sum allocation scheme. This method will allow each team to decide on how much to spend on players, coaches and other expenses needed. Accordingly, both option would substantially eliminate any rich club-poor club disparity and produce a rivalry between the club subsidiaries on the field (James B. Perrine, 2002). In principal, the purpose of all these arrangement on making the player hiring decisions is to give the clubs greater autonomy, which may lead to the assurance of club independence. This kind of practice also will increase the competitive balance arrangement of the league as well as it is able to uplift the spirit of the football players to play more industriously. It is also able to encourage them to acquire various football skills to promote and ensure the growth of the football league.

Advantages of the Media-League Model

The advantages of the MLM can be seen through two major aspects; firstly from stakeholders perspective and secondly from an economic perspective. As from the stakeholders perspective, in particular with the players allocation scheme that will be offered by the MLM, the problem of players' salary could be resolved. Apart from that, the model also could ensure the competitive balance arrangement of the football league. The players will compete positively and they will receive a salary to commensurate with the skills that they possess, which in turn would inspire them to acquire new skills. As an incentive, a mega-media company may also further its recruiting efforts by offering additional employment opportunities to the star players who are increasingly becoming popular icons throughout the country in the entertainment industry, such as film recording contracts. Thus, there are no difficulties for a mega-media company in finding players for its media league (Trevor Slack, 2004).

Another advantages is that the media league may reduce the uncertainty of transmission rights. As sports broadcasting rights are absolutely vital for commercial development, through this model it enables a mega-media company to create multiple brands of professional sports programming according to its needs (James B. Perrine, 2002). This situation will then benefit the new media distributions network through the opportunity to handle such multiple brands programming and be a part of the major sports events. This also provides synergy to a mega-media company and indirectly it may overcome the problem of monopoly of football broadcasting rights.

According to James B. Perrine (2002) by creating a media league, it can be said that, a mega-media company is not only the owner of the professional sports league, but also as "a sports/entertainment/media brand" developer and manager. Therefore, a mega-media company may also enter into joint ventures or alliances with other firms to produce products or services based on the media league which it could not handle by itself. In such circumstances, it will offer business opportunities for interested stakeholders and thus have a positive impact on the national economy.

Another advantage of a media league is that, its structure will enable a mega-media company to operate as an enterprise with less fear of challenge from member clubs or players for antitrust. Since the mega-media company owns all the teams, where a subsidiary club fails to act in the best interests of the media league, it have power to exert its control at any moment. In addition, rules, rewards and sanctions also can be structured by the mega-media company to control the individual club subsidiaries so as not to conflict with the objectives of the media league (James B. Perrine, 2002). Through these means, a mega-media company also can prevent any subsidiary club from taking a particular action that is unfavorable to its proper functioning.

From the economic point of view, it suggests three broad reasons for these types of MLM, which are organizational efficiency, technical efficiency and market power (R. Clarke, 1985). As for the issue of competitive balance in the media league, a mega-media company's control over the economic operations of the enterprise, reduce the ability of club subsidiaries to maximize their financial returns.

Applying the media-league to the Malaysian position will direct the Malaysian League to have a tremendous impact for stakeholders, Malaysian economy as well as the Malaysian football industry. The ownership of league by mega-media groups or company also could potentially have a very profound impact on the future direction of professional team sports, especially on the sporting and financial viability of leagues (Bill Gerrard, 2004). If the mega-media company can guarantee transparency in the wealth and profit redistribution of media and broadcasting rights, then it would be of great benefit for the development of professional football in our country. The redistribution of profit would be as the biggest sources of funds for the affiliate members of FAM that participated in the leagues. It would then inspire the players to develop their football skills and this will increase the competitiveness of professional football league in Malaysia.

The New Proposed of Sports League in Malaysia

Apart from using MLM as a method of privatization of Malaysian Football League, Limited Liability Partnership (LLP) is also another method proposed by FAM and will be implemented in the next season. Basically, LLP is a new concept of business vehicle, which is a hybrid company-partnership with conventional partnership features and limited liability company (LLC) privileges. There are special features and benefits of LLP especially regarding its limited liability status. Accordingly, Companies Commission Malaysia (SSM) proposes that, a limited liability status will be conferred to LLP, in which it differs from the general partnership law which imposes joint and several liability on general partnerships for all tortious acts for their co-partners acting within the scope of their actual or apparent authority (P. Frances et al, 2013).

Furthermore, under LLP as well, the partners should be accorded limited liability in respect of tort and contractual claims (T. Grace, 2008). This means that the individual partners will not be liable from the contracts, debts, obligations and liabilities of the LLP as well as personal liability from the conducts, wrongful acts, omissions, negligence or other tortious conduct of an employee, staff or co-partner; which were carried out during the course of business. The personal assets of partners also will not be at risk for such acts or matters.

Moreover, persons dealing or contracting with a partner of an LLP will be dealing or contracting with the LLP rather than its partner. Therefore, the obligation incurred and liability arising from the dealing or contract is upon the LLP and not its partners personally. In the event that LLP becomes insolvent, the partner's liability should be limited to the amount of his capital contribution to the LLP subsisting at the time (T. Grace, 2008).

Applying LLP to the current Malaysian League will give advantages to FAM due to the rights of controlling the leagues which can still be shared among the partners. Therefore, FAM will not lose 100% of its power over the leagues. Currently, MP & Silva Pte Ltd, were brought in as partners advising in media. The liability protection offered under LLP structure will protect the individual partners and individual partners also will not be personally responsible for company's debts or other obligations. This is actually advantageous for all partners should there be any potential lawsuits or claims of negligence against them.

Conclusion

It is commonly accepted that governance structures have a significant impact on the performance of a sporting organizations. Therefore, it is important to ensure that the appropriate governance model is applied in the Malaysian professional football leagues. Besides, it also can be considered as an important aspect for the leagues to run smoothly, effectively and successfully.

The current model of single entity in sports league which is applied in Malaysia, is being debated recently for its downfall and failure. The stakeholders stressing that their rights have been denied by the current practice of league management. As a result, in reality, there are still complaints from the affiliate's members of FAM that did not get a fair return for their participation in the football league. This resulted in the football club teams competing in the M-League to spend large allocation of money for the development of their players which is estimated to range between RM1 million and RM2 million per year (Awani News, 2015). This has subsequently become one of the reasons why players and coaches' salaries cannot be paid. Due to this fact, the performance and quality of the performance of players who play in the professional football league also become weak. It also caused the difficulties in the production of professional players. This situation gives room for a lot of speculation and negative perception from public, especially from football fans and supporters of the football industry. This current issues illustrate the lack of legislative protection of stakeholders' rights.

Privatization of Malaysian professional football league is the best way to achieve higher independent profit making and welcome more attractive business. It is suggested to the Malaysian Football Association (FAM) to implement the privatization of football league through the adoption of the MLM or LLP for them to manage the football league in Malaysia. Through the adoption of MLM for instance, it will offer a better advantages to its stakeholders especially the players and also the new media distribution networks. It will also be able to make the football league more interesting in a sense that it is no longer easily predictable. The conflict between rich-poor clubs regarding the ownership of best player will also be addressed by the adoption of this model. This kind of practice also will increase the competitive balance arrangement of the league as well as being able to uplift the spirit of the football players to play with more industriously. It also will encourage them to acquire various football skills to promote and ensure the development of the football league. Apart from that, the LLP model also can be adopted for the privatization of the Malaysian professional football league. Under this model, the LLP gives more advantages to their partners by providing protection from any liabilities incurred by the company in relation of the management of the football leagues.

However, the application of a MLM and LLP is not without difficulty. For the sake of development of the sports industry in Malaysia, especially in football industry, the readiness of the Malaysian Football Association (FAM) in adopting such privatization models is very important. With such readiness, the implementation of either MLM or LLP may give greater impacts on the management of the Malaysian football league, better protection of the interest of the stakeholders, as well as to the general development of the Malaysian sports industry.

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