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SPECIFIC CHARACTERISTICS OF SPONSORSHIP CONTRACT

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Sponsorship contract represents one of the legal backgrounds which is commonly used in modern sport. As a relatively “young” and quite specific contract it has not been codified yet. The causa of a sponsorship contract is linked to the expectations of both parties of the contract at the time of the conclusion of the contract. As a bilateral contract of obligation, sponsorship has a strong economic background which is the leverage for the conclusion of the contract.

A definition that highlights the characteristics of sponsorship contains the International Chamber of Commerce Advertising and marketing communication Code. There are several different elements of the definition which characteristically represent the essence of the sponsorship relationship. Among them are the mutual benefit of the sponsor and sponsored entity, providing of finance or other support, ambition to establish an association between the sponsor’s image, brands or products and a sponsorship property, return for rights, promotion of the association between parties, grant of certain agreed direct or indirect benefits, and some others. In the article there are explanations of different above elements.

It seems that the above parameters are the essence of the sponsorship agreement which also reflects the basic elements of the definition of the ICC sponsorship agreement. The ICC definition provides a basis that fully captures the typical elements of a sponsorship contract and which could lead to future efforts in terms of finding the right definition for a possible legal codification of the sponsorship contract.

From the sponsor’s point of view, sponsorship represents an attempt to identify with the value of the sponsored entity, the purpose of which is further manifested by the promotion of this link, both leading to the sponsor’s objective of raising or improving its image in the public or in society. The key here is the ability of the sponsor to turn a challenge into an opportunity, which is then exploited. The opportunities must outweigh the challenges, which is the original motive of the sponsor in the sponsorship contract.

Key words: *sponsorship contract, elements of a sponsorship contract, International Chamber of Commerce Advertising and marketing communication Code*

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1. INTRODUCTION

The sponsorship relationship is governed by the sponsorship agreement, which is one of the most important legal bases for the acquisition of funds by sports entities. Given the fact that these funds come from the private sector and that more and more sports entities are dependent on this source, it is important to identify the key elements of sponsorship.

A review of foreign legislation shows that no country has yet comprehensively legislated the sponsorship contract. It is interesting to note that even in countries with a much longer tradition and experience of sponsorship agreements, no single definition has yet been devised to “cover” the essential elements of this type of relationship. It can be noted that there are a number of different views on the regulation of the contract itself, ranging from the very definition and designation of a sponsorship contract to different interpretations of the various legal and other elements that form part of the contract.

2. LEGAL NATURE OF SPONSORSHIP CONTRACT

As in all contracts where the “causa” of the obligation is the reason of the obligation, the causa in the contract of sponsorship has yet to be found. It should be borne in mind that, particularly in the case of mixed contracts, it is not the type of contract that gives the existence of the causa, but it is yet to be determined on a case-by-case basis. A “causa” may exist not only for one reason but for a number of reasons and purposes. If only one of those reasons and purposes fails, the transaction loses its foundation.¹

The causa of a sponsorship contract is linked to the expectations of both parties of the contract² at the time of the conclusion of the contract. As a bilateral contract of obligation, sponsorship has a strong economic background which is the leverage for the conclusion of the contract. The conclusion of the contract is linked to the expectations of both parties, each of which expects certain economic benefits from the sponsorship contract. The relationship between supply and demand, as the main market regularity, is already at the forefront of the assessment of the parties’ starting positions. Depending on the market situation, the two parties have different options. In cases where the demand for a particular sponsored entity is high, it is logical that its bargaining position against potential sponsors is strong. The market is therefore the element that determines the sponsorship position through supply and demand. Sponsored entities, with their specific substrate, represent a certain special value

¹ Cigoj, Veliki komentar obligacijskih razmerij, str. 196

² We distinguish different contract partners coming from the sport side which are sponsored. Most common are athletes as individuals, sport clubs and organisations as legal persons and organisers of sport events or competitions under the same name as sponsored entities.

for sponsors and if this value is acceptable to the sponsor, the possibilities for a contract open up.

Economic interest is dominant. The laws of supply and demand operate at global and national level, and, as in other commercial relationships, certain specificities must be taken into account. For the global world situation, the sponsorship products of interest are those needed by entities operating transnationally. In this context, it is worth noting the specificity brought about by the remarkable development of broadcasting and other electronic media, which have become the most universal and global means of media with a visual image and without language restrictions. In general, electronic media that are not constrained by linguistic frameworks are evolving very rapidly, which also brings considerable dynamism to the field of sponsorship.

Digitisation and the use of social networks have brought about enormous changes in public perception in the modern world in recent years, and this is also reflected very intensively in the field of sponsorship in sport. Interestingly, the recent trends show a remarkable increase in electronic internet media at the expense of broadcasting, which is particularly evident in the USA. For the Tokyo 2021 Olympic Games, the NBC network reported a viewership half that of the London 2012 Olympic Games, with an average of 31 million viewers per day in the US then, but only 15.5 million in during Tokyo 2021, the lowest since 1988, or since NBC has held the rights. The three main reasons were the postponement of the Games for a year due to a pandemic, the different time zone of Japan and the broadcast of the Olympic programme on different platforms. Despite historically low viewership by standard viewership measures, a record 6 billion minutes of Olympics programming was 'streamed' on various platforms.³

The habits of the public watching sporting events are therefore changing radically, and this must also be taken into account when designing concepts for sponsorship in sport. It is also important to take into account the factors that influence sponsorship decisions at a global level, which may differ to a considerable extent from those that are relevant at a national or regional (local) level.

On the other hand, exclusivity, which is an important element of sponsorship, should be taken into account as it limits the possibility of alliances by preventing the conclusion of contracts in cases of competitive conflicts. Once a certain area of the sponsor's business is already covered, other business subjects in that area are excluded from that relationship. The sponsored entity is limited to have only one sponsor in a given business area and on the other side business companies as

³ For example, NBC used to stream basketball on its Peacock Premium streaming platform for just under \$5 a month, and Olympic basketball was the only sports content on the platform. But just as Amazon buys the rights to stream sports on its Amazon Prime platform in order to recruit additional subscribers to its service, rather than in order to maximise viewership, this also represents a business decision by NBC in order to develop its product in the future. NBC has thus broadcast the Olympic Games on more than 8 of its own channels or platforms - all in a bid to promote individual programmes for other content, as well as to literally pour users or fans across the various channels in as large numbers as possible.

potential sponsors from a particular business area are also limited, as only one of them can work with that sponsored entity.

The purpose, cause and motive for entering into a contract vary according to the parties to the contract. Sponsored entities tend to seek relationships from which they seek to obtain the highest possible price. On the other hand, the sponsor is in a different position, as it needs to be able to use the sponsorship for its business objectives. The *modus operandi* to get the most out of a sponsorship is a key challenge for the sponsor. In doing so, it can rely on economic indicators that allow it to monitor its investment. The reason for the sponsor entering into the contract is a specific asset of the sponsorship, a new value that derives from the sponsorship property as a specific “*sui generis*” value not found in other contractual relationships and which is transferred from the sponsored entity to the sponsor. An important element attached to the *causa* is the expectation on the part of the sponsor, who, when concluding the contract, expects a way of implementing the contract which will bring him new added value. The specificity of the sponsorship contract also lies in the certain unpredictability of the effects it is expected to have on the sponsor, since the real value of the contract may fluctuate considerably during the performance of the contract due to the unpredictability of the sporting performance of the sponsored entity.

3. IMPORTANT STRUCTURAL ELEMENTS OF THE CONTRACT

As with any bilateral repayment contract, the interests of the parties to a sponsorship contract are usually different. The content of the sponsorship contract must be understood on a contract-by-contract basis. However, in view of the particular types of contracts that have become established in commercial practice to date, it is also possible to search for the contract’s *causa* by taking an analytical approach to some of the definitions and individual characteristics of the different types of sponsorship contract.

The definition of the contract itself should determine the legal nature of the contract and contribute to facilitating the classification of the contract. The fact that the sponsorship contract has not yet been codified shows that it has a characteristic that is also shared by some other modern autonomous commercial law contracts. These are contracts which contain such specific features and change so rapidly that, in terms of development, upgrading, and qualitative changes to the contract, literally from day to day, they do not survive codification in the major civil law codifications.⁴

A definition that highlights the characteristics of sponsorship contains the International Chamber of Commerce Advertising and marketing communication

⁴ Grilc P., *Pogodba o franchisingu*, page 10.

Code.⁵ According to it the term “sponsorship” refers to »any commercial agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, contractually provides financing or other support in order to establish an association between the sponsor’s image, brands or products and a sponsorship property, in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits.« This concise definition encapsulates the most important structural elements of sponsorship, which are set out below.

3.1. Commercial agreement

Sponsorship is a commercial obligation under modern autonomous commercial law. In this part, the definition does not refer to a contract, but to an arrangement that can be conceived more broadly than a contract, perhaps less formally, which is most appropriate for sport as a very broad spectrum of different possible links. Business can be understood as an indication that it is a commercial transaction, which could mean that it should be considered as a commercial contract.

According to the wording of the ICC Code, there is no question of a commercial contract in this case. The ICC definition does not speak of a commercial contract but of a business arrangement, which is a broader term that seeks to emphasise that it is not a form of donation.⁶ From the context of the definition as a whole, it can be seen that both parties are obliged to fulfil their obligations, which gives the relationship a proper commercial meaning.

3.2. Activities of the sponsor in the common interest of the sponsor and sponsored party

This area is very specific compared to other similar contracts. Emphasising the common good of both parties of the contract has several starting points and meanings. In particular, sponsorship relies on the synergistic action of both parties towards the public. The common purpose and interest are to raise the value of both entities in the public eye. As a rule, sporting success stimulates media interest, which means an increase in the value of the sponsor’s substance. Sponsorship is based on a link, an identification of the values of the sponsored entity and the sponsor, so that the increase in the value of the sponsored entity (for example an image of a well-known athlete) correlates with the increase in the value of the sponsor. Thus, the frequency of an athlete’s appearance in a sponsor’s advertisement may have an impact on maintaining or even increasing the appearance value of the athlete. Both parties are therefore striving to maximise publicity, positive publicity which must

⁵ Code available via web site: www.iccwbo.org.; definition of sponsorship contract is contained in the ICC Advertising and marketing communication Code, page 26,

⁶ ICC Advertising and marketing communication Code points out that “donations and patronage” refers to forms of altruism where money or goods may be given, with only negligible or no benefits, recognition or commercial return

not be allowed to fall by the wayside; it is a clear mutual, common interest. Both parties, each in their own way and together, are working to maintain public appeal.

The securing of the common benefit of the two parties must be interpreted as an objective pursued by both parties. The common benefit is the successful identification or association of the value of the sponsorship with the sponsor. The achievement of good sporting results and a positive public perception of sport is enhanced by a joint effort by both parties to establish the sponsorship relationship in the eyes of the general public in the highest possible quality. This benefits the sponsored entity, whose commercial value is increased by the sponsor's successful promotion, and also the sponsor, whose image of being associated with the sponsored entity is enhanced by intensive communication with the public. The sponsor is therefore primarily investing in the sponsorship for its own benefit, which increases the benefits for both parties and ultimately results in an even better return for the sponsor. By paying the amount of the contract, the sponsor enables the athlete (sport club) to train and prepare for competitions, which is a prerequisite for achieving good sporting results which represents the benefit for the sponsor in the narrow sense. The intensively promoting the successful athlete's link with the sponsor also increases the commercial value of the sponsor (benefit for the sponsor in the broader sense). Notwithstanding the above, the ultimate objective of the sponsor is to maximise the commercial return on the contract, which requires the achievement of a series of "milestones", the common subsidiary objectives mentioned above.

3.3. Financing of the sponsored entity or other support

It is a classic formulation of the law of obligations, where sponsorship is characterised by a division between sponsors who provide financial resources and those who, primarily through goods and services, ensure the fulfilment of their obligations. Furthermore, the definition is characterised by the fact that it introduces a concept of support which is rather unusual in the law of obligations, and which could also indicate a charitable purpose on the part of the sponsor. In this context, however, the term support should be understood in a different way, namely in the sense of a contribution of a share by which the sponsor, together with others, helps to create the conditions in which the sponsored entity can achieve the desired results.

In this context, it is worth pointing out a particular feature of sponsorship. The sponsor contributes its share to the sponsored, who uses it to "produce" a good result that is in the interest of both. In essence, it is an investment in the sponsored entity, who uses the sponsorship funds for his/her own needs, which include expenditure on his/her sporting programme, with the aim of achieving an optimal sporting result. From the sponsor's point of view, the sponsor's payment is therefore considered as a reward for the use of the value of the sponsored entity, for whom these funds are a prerequisite to continue its work. If the sponsored entity is not successful, this may lead to the sponsor not renewing the sponsorship contract. In a sense, all commitment relationships can be interpreted in a similar way, although it is the

‘investment’ of the sponsorship funds, which the sponsored entity uses for its efforts to achieve results, that is particularly characteristic of sponsorship.

3.4. Intention to link sponsor with sponsorship property

It is about the purpose, the causa of sponsorship. It is the specific identification, connection in the eyes of others that constitutes the main meaning and content of sponsorship. Connection is a key motivational element that must be recognised by the sponsors, otherwise the sponsorship contract is of no interest to them. The element of linking is mentioned twice in the definition. Firstly, it is linked to the sponsor’s intention to link some of its attributes (image, brand, product) through the sponsorship, and secondly, it is linked to the context of promoting the link thus created.

The link element is specific to sponsorship, distinctive, different from the other parameters, and it is this characteristic that decisively distinguishes a sponsorship contract from all other contracts. This can be illustrated by comparing it with a licence agreement. The main purpose of the exploitation of an industrial property (trade mark) in a licence agreement is to obtain the right to exploit the subject-matter of the licence. There is a restrictive principle as to the scope of the licence. It shall be used only to the extent that it is clearly agreed that it may be used. Exploitation of the licence includes the combination of the industrial property signs of the licensor and the licensee, unless this is expressly excluded in the contract. The use of a trade mark in a licence agreement may, by its very nature, imply a tendency to use it with a view to linking it to, or identifying it with, its own substrate, but this is neither a necessity nor a condition. Nor does a licence to manufacture an article imply that the product will bear the marks of the licensor and the licensee. The licensee acquires the right to produce the licensed product, whereas in the case of sponsorship, a specific link, the identification with the property of the sponsored entity with the sponsor, is essential. The link to the licensee’s brand, which is not an essential feature of the licensing agreement, is the most significant element of the sponsorship agreement.

The link is perhaps best illustrated in the case of personal sponsorship, where the sponsor seeks to exploit the sponsored athlete as a celebrity in order to link the athlete’s personal substrate to a particular hallmark of distinction of the sponsor. In this context, it is worth considering endorsement as a specific way of linking sponsors to famous personalities who fulfil their contractual obligations in a specific way by using their image. It may be a sponsorship contract, the essence of which is the activity of the sponsored entity to address the public for the purposes of advertising its sponsor. It is a form of sales promotion aimed directly at a specific product or service of the sponsor. It is the most typical form of linking the personality of the sponsored person to the product/service of the sponsor, if this relationship is considered as a form of sponsorship.

3.5. Sponsorship property as a very special value

Particular attention should be paid to the term sponsorship property. The English term /property/ could also be translated differently, but the point is that it seeks to express a new quality that the sponsor has succeeded in creating its own new property. Sponsorship is thus characterised by a subjective right of the sponsor, as distinct from a pure personality right of the sponsored athlete. In essence, sponsorship property can be classified into 3 main branches. In sponsorship agreements with sports organisations, the property is usually /1/ the trademark, in the case of sponsorship of athletes, it is /2/ the use of a personal image or other personality rights, and in the case of sponsorship of sport events, the property is /3/ the new value created by the sport event as special, sui generis right.

The best example to describe a very special value of sponsored entity is probably the form of personal sponsorship, called endorsement.⁷ Sponsorship rights, which rely on the personality rights of the sponsored entities (typical for the American and English models), define endorsement as a mean of promoting and advertising the sponsor's product when the sponsored entity (personal substrate) is used for such purpose. It is a 'halo' effect with the aim of transferring the value of the sponsorship in the eyes of the public (popular well-known sports personality recommending the use of the sponsor's product) to the sponsor. The use of personality rights is normally subject to the person's permission, otherwise it is considered as interference with personality rights. The use of a celebrity for advertising in the context of a sponsorship must therefore be carefully negotiated and agreed by sponsored individual, as the celebrity is the substrate that can be offered to the sponsor for commercial exploitation. The authorisation to use a personal image, a character with distinctive features, a manner of behaviour, a voice or other characteristic distinctive elements identified with a particular sponsored person constitutes the subject-matter of the contract.

In essence, the main task of the sponsor is first /1/ to choose a subject or object which it considers will attract the public's attention in a way different from that of 'ordinary mortals' or ordinary, everyday routine events, and then /2/ to transfer the chosen value to itself. The sponsor seeks to turn challenges into opportunities, which are then effectively exploited. It is the celebrity, the well-known sports brand of the team, the famous sports competition that represents the special value inherent only in the sponsorship contract and that makes sponsors choose it. Compared to a normal advertising contract, sponsorship is known precisely for the fact that it seeks to exploit this special value of the sponsored entity, which is much more interesting and attractive to the public than a normal advertising object. The transience of the fame of athletes to sponsors must be taken into account, since it is on this element that the successful realisation of the sponsorship depends. Sponsors may also be

⁷ Endorsement means the transfer of the value of the sponsored person to the sponsor, who desires an association with the characteristics of a well-known athlete, which should lead to a clear mutual recognition of both subjects in the public eye.

interested in a person who has retired from active participation in sport, provided that as a personality he or she can still provide value to the sponsor's needs.

4. CONCLUSIONS

Taking all these elements into account, the sponsorship contract can be defined, from the sponsor's point of view, as an attempt to identify with the value of the sponsored entity, the purpose of which is further manifested by the promotion of this link, both leading to the sponsor's objective of raising or improving its image in the public or in society. The key here is the ability of the sponsor to turn a challenge into an opportunity, which is then exploited. The opportunities must outweigh the challenges, which is the original motive of the sponsor in the sponsorship contract.

It seems that the above parameters are the essence of the sponsorship agreement which also reflects the basic elements of the definition of the ICC sponsorship agreement. The ICC definition provides a basis that fully captures the typical elements of a sponsorship contract and which could lead to future efforts in terms of finding the right definition for a possible legal codification of the sponsorship contract. The elements incorporated in the ICC definition of sponsorship cover all the key characteristics of a sponsorship contract that should be known by all those who are involved in sponsorship in one or another way.

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POSEBNE OSOBINE UGOVORA O SPONZORSTVU

Ugovor o sponzorstvu jedan je od pravnih poslova koji se često koriste u suvremenom sportu. Radi se o razmjerno „mladom“ ugovoru, koji još nije kodificiran. Razlog za sklapanje ugovora o sponzorstvu povezan je s očekivanjima ugovornih stranaka u vrijeme sklapanja ugovora. Sponzorstvo kao dvostrani obligacijski ugovor ima snažni privredni značaj koji je tako uzrok za sklapanje ugovora. Posebne osobine sponzorskog ugovora predmet su Kodeksa oglašavanja i tržišnog komuniciranja Međunarodne trgovačke komore (ICC). Definicija sadržava više različitih elemenata koji karakteristično ističu bitnu osobinu međusobnog odnosa stranaka u ugovoru o sponzorstvu. Među tim su elementima obostrana korist sponzora i sponzoriranog subjekta, osiguranje financijskih sredstava ili druge pomoći, sklonost da se uspostavi identifikacija između imidža sponzora, njegovih robnih marki odnosno proizvoda sa svojstvom sponzoriranog subjekta, zamjena te specifične imovine, promocija povezanosti između stranaka, dodjeljivanje određenih izravnih i posrednih koristi za sponzora i još neki. U članku su elaborirani gore navedeni elementi. Čini se da su gornji parametri bitno svojstvo sponzorstva te odražavaju i bitne elemente sponzorskog ugovora koji su definirani u Kodeksu ICC-a. Definicija u Kodeksu ICC-a pruža osnovu koja u potpunosti obuhvaća tipične elemente sponzorskog ugovora i koja može voditi u budućim nastojanjima u smislu traženja pravnog definiranja za kodifikaciju ugovora o sponzorstvu.

Sa stajališta sponzora, sponzorstvo predstavlja pokušaj identifikacije s vrijednošću sponzoriranog subjekta koji ima namjeru istaknuti se u promociji te povezanosti, no oboje vodi prema cilju podizanja ili poboljšanja imidža sponzora u javnosti i društvu. Kod toga je bitna sposobnost sponzora da izazov promijeni u priliku koju potom iskoristi. Prilike moraju nadvladati izazove, što je prvi motiv sponzora u sponzorskom ugovoru.

Ključne riječi: *sponzorski ugovor, elementi sponzorskog ugovora, Kodeks o oglašavanju i marketinškoj komunikaciji Međunarodne trgovačke komore*