

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

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ABSTRACT

Malaysia Super League is now a private single entity. The model of single entity in sports league is being debated recently for its fall 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 privatisation model. Thus, significant study and need for a more acceptable privatisation 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 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 organisations, a player allocation schemes that equally distribute talent among competing clubs is designed. The precise line of autonomy between sports organisation 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 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 and satisfaction to both privatised sports league operators and stakeholders. This reduces legal challenge for rights sales, costs associated with broadcasting and transmission, commercial strategy and anti-siphoning / competition regulations. The research approach 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. The jurisprudential approach covers the social-legal-historical epistemology, positive and moral philosophy of both models of privatisation. The result was the more comprehensive privatisation 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 Organisation, 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).

This paper discusses an initial study for a more accepted privatisation 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 and its challenges. The second part is to examine the possible adoption of the Australian Media-Leagues model that administers and coordinates the operation of the sports league.

CURRENT MODEL FOR FOOTBALL LEAGUE IN MALAYSIA

In Malaysia, Malaysian Football Association (FAM) is the governing body for football. 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 in Malaysia. 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 at State and club levels. Over the years, the league competition has gained important status in its own right. The current practice in organizing football league in Malaysia is based on single entity sports league under the auspicious Malaysian Super League Sdn. Bhd (MSL). A single entity sports league is a type of sports league in which the league investors share all the property rights in common (Marc Edelman et al, 2009). The single entity structure basically involves a limited liability company that house all of the league's teams. Under this type of league, the investors own an undivided interest in this company. Besides, under this model, the investors have two roles, firstly, they are responsible for financing and operating the entire league. 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. Secondly, act as the league's board of directors.

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 current 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 media. For broadcasting rights, any media companies need to undergo a bidding process set by FAM. Astro Malaysia Holdings Bhd, a leading integrated consumer media entertainment group in Malaysia and Southeast Asia; formerly held the broadcasting rights to domestic football until the end of 2014. Currently, for year 2015, MP & Silva Pte Ltd, a media rights company that owns, manages and

distributes sports media rights; were brought in as partners advising in media. The rights have not been sold yet to any local TV station and this situation lead to the protest by fans who are unable to attend matches at the stadium. Astro Malaysia Holdings Bhd previously have created one live channel for live broadcast of football matches and the latest progress report on Malaysian football. Media rights for example have been monopolised by one media company. As widely known, in the case of football leagues for instance, the proportion of TV rights or media rights revenues with respect to the total revenues has increased dramatically. The monopolization of media rights then will also restraint the rights of new media distribution networks.

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 reducing the scope of direct operation of government in economy. In common, it 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 an exception in this regard. In many countries, the club or sporting association traditional structure has been changed, and due to commercialization purpose, privatization is the best way to achieve higher independent profit making and welcome more attractive business.

MEDIA-LEAGUE MODEL

To overcome the current Malaysian football league problems and enhance the legal protection of the league stakeholders, sports organizations, sponsors and media; privatisation of league through media league model is seem important.

A media league is defined as '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 practising of traditional league whereby media is the purchaser of the products of a professional sports league.

The special characteristic of media league model is that every aspects of the professional sports league are being control by the mega-media company. Accordingly, all the functions of a central competition organiser, 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).

Moreover, the media league is also based on the concept of "parent/subsidiary" media league whereby in a "parent/subsidiary" media league, the mega-media company is considered as a parent and the individual "club" is considered as a subsidiary of the parent mega-media company. Another subsidiary of the parent mega-media company acts as the "central competition organizer" who has authority to administer and coordinate the league competition. Even so, the parent mega-media company have the ultimate authority over all league policies and affairs.

The media-league model 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. The main reason is that the rich club is able to buy great and high quality player compared to poor football club. This situation may eventually lead to an uninteresting football league. Through the application of media-league model, the parent company have 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 the player allocation scheme, under media league model, the mega-media company have power to decide instead of the individual clubs on how much to spend on a particular player. To promote reasonable balance in a media league, a mega-media company can choose from a number of different arrangements. Basically, there are two methods that can be applied for player allocation scheme. The first method is that, the parent company may grant each subsidiary club an equal amount of funds with a fixed amount designated for signing 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.

The second method is in contrast with the first method in the sense that 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). Principally, all these arrangement on making the player hiring decisions is purposely to give the clubs greater autonomy in which it 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 enhance the spirit of the football players to play more earnestly. It is also able to encourage them to learn various football skills to ensure the growth of the football league.

ADVANTAGES OF THE MEDIA-LEAGUE MODEL

The advantages of the media-league model can be seen through two major aspects which are firstly from stakeholders aspects; and secondly from economic aspects. As to the stakeholder's aspects, especially for the players, with the players allocation scheme that will be offered by the mega-media company, the problem of players salary can be encountered. Apart from that, the model also will ensure the competitive balance arrangement of the football league. The players will compete positively and they will get salary in accordance with the skill that they have. This will inspire them to acquire knowledge of new skills. As a bonus, for a great player, a mega-media company may also further its recruiting efforts by offering additional employment opportunities in the entertainment industry, such as film recording deals to star players, who are increasingly becoming popular icons through out the

country. Thus, there are no difficulties for a mega-media company in finding players for its media league (Trevor Slack, 2004).

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 that it could not offer alone. Here, 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 "a sports/entertainment/media brand" developer and manager (James B. Perrine, 2002). 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 enables a mega-media company to operate enterprise with less fear of antitrust challenge from member clubs or players. This is due to mega-media company owns all the teams and if 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 for do not 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 unfavourable to the proper functioning of the media league.

From the economic point of view, it suggests three broad reasons for these types of media-league model, which are organisational 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 maximise their financial returns.

Applying media-league to the Malaysian position will direct the Malaysian League to have a tremendous impact for stakeholders, Malaysian economic as well as Malaysian football industry. The ownership of league by mega-media groups 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).

THE NEW PROPOSED OF SPORTS LEAGUE IN MALAYSIA

Apart from using Media-league Model as a method of privatisation 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 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 loss 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 organisations. Therefore, it is important to ensure that the appropriate governance model is applied in Malaysian professional football leagues. Besides, it also can be considered as an important aspect for the leagues to run smoothly, effectively and successfully.

Privatization of Malaysian professional football league sports is the best way to achieve higher independent profit making and welcome more attractive business. Through the application of media league model for example, it will offer a better advantages to its stakeholders especially the players and also the new media distribution networks. The application will also be able to make the football league become more interesting in the sense that it is not easily predictable. The conflict between rich-poor clubs regarding the ownership of best player will also be addressed by the application of this model. This kind of practice also will increase the competitive balance arrangement of the league as well as being able to enhance the spirit of the football players to play with more earnestly. It also will encourage them to learn various football skills to ensure the growth of the football league. Apart from that, the limited liability partnership (LLP) model also can be applied for privatisation of Malaysian professional football sports league. Under this model, it gives more advantages to the partners of the LLP from its liability protection offered whereby it will protect the individual partners and they will not personally be responsible for company debts or other obligations.

However, the application of a media league model and limited liability partnership (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 applying such privatization method is very important. With such readiness, the implementation of either media league model or limited liability partnership (LLP) may give greater impacts on the management of Malaysian football league, better protection of the interest of the stakeholders, as well as to develop the Malaysian sports industry.

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