



## SPONSORSHIP CONTRACTS

Sponsorship is a popular method of marketing a product or a brand and can give the sponsor greater exposure to a wider audience than the more usual advertising methods.

Sponsorship can take a number of different forms – for example, an individual or business might sponsor an event, an individual, a team or another company – the list is almost endless. Sponsorship deals can arise in a number of different contexts (not just sport), with the core principles largely transferable between sectors.

It is important to remember that in each instance the relationship between the parties goes both ways. Sponsors will usually make a financial commitment (sometimes alongside other non-financial obligations) in return for a grant of various rights, which may be extensive and coupled with other benefits (e.g. free tickets). As with any contract, it is crucial to understand what each party is looking to achieve from a sponsorship relationship. This can especially be important further on in the relationship where a party is looking to calculate its actual return on investment.



Stevens & Bolton LLP has created this checklist as an overview of some of the issues which a sponsor should consider when entering into a sponsorship contract. The checklist (to the extent possible) is designed to apply across a range of sponsorship opportunities, although in each case careful consideration should be given to the nature of the deal on offer as some of the points on this list may not apply as a default.

### PARTIES TO THE SPONSORSHIP AGREEMENT

- Check whether the contracting sponsored party has the legal capacity and right to grant the sponsorship rights to the sponsor and, if necessary, obtain warranties to this effect.
- Consider carefully the impact if the counterparty is an offshore entity. This is not unusual in some sectors (e.g. in a sporting context, some sports people can undertake their commercial arrangements through offshore companies set up for tax purposes), which may mean that the sponsor requires additional comfort. For example, offshore image rights companies can attract the attention of tax authorities, so a sponsor may wish to include an indemnity for tax-related matters.

## EXCLUSIVITY/RESTRICTIVE COVENANTS

- Consider if the sponsor is a sole sponsor.
- Consider whether the sponsor should have exclusivity in a particular category/product area as part of a multi-sponsor approach. If so, does the category accurately reflect the sponsor's business or will there need to be careful drafting to ensure that the exclusivity wording does not cut across sponsor business operations?
- Is the sponsor part of a multi-tiered sponsor approach, where different sponsors are granted a rights package dependent on financial contribution? Consider if this creates issues for the sponsor (e.g. possible overlap with competitors or categories).
- Consider whether there are any restrictions which the sponsor wishes to impose (or try to impose) on potential competitors.

## SPONSORSHIP RIGHTS

- Consider whether the nature of the rights being granted are sufficiently clearly documented.
- Consider any specific rights granted and how these are described, for example:
  - official supplier (e.g. provision of kit)
  - signage rights (e.g. at an event)
  - clothing rights (e.g. rights to place logos on official uniforms)
  - the right to promote or sell its own products at an event or location (e.g. food and beverage deals for stadia)
  - hospitality suite/free tickets/other tangible benefits
  - the right to place the sponsor's brand on official materials (e.g. tickets, brochures)
  - the right to brand an event or location with a sponsor's brand (e.g. venue naming rights)
  - broadcasting rights (e.g. the right to show an event on a designated channel)
- Consider in each case how the rights granted have an effect on the other provisions in the agreement. For example, the right to place a logo on certain materials could also require a licence to use the logo, with appropriate provisions around approval of the materials.

## TERM/OPTION TO RENEW

- Consider whether the term of the sponsorship agreement requires further thought in the context of the type of deal that has been agreed - e.g. is the arrangement for a fixed term (perhaps a specific concert tour or season) or is it for a one-off event or series of events?
- Consider whether the sponsor requires an option to renew its sponsorship or a right of first refusal to future events. It is not unusual for an agreement to contain a right to match any future offers from competing sponsors for future periods of time.

## TERMINATION

- Consider whether the sponsor requires any bespoke termination rights in addition to the (more) usual rights for breach and insolvency.
- Consider whether there are any outcomes which are likely to devalue the sponsorship, and whether the sponsor should have an ability to exit the arrangement in such circumstances. For example, if a concert does not sell enough tickets, a celebrity or sportsperson is accused of undesirable behaviour, or an organisation suffers an embarrassing scandal.
- Consider if there are any termination rights which are specific to the sponsored party. For example, a sponsorship deal for a sports person might be terminable if they are no longer qualified for a particular event, or an event sponsorship deal might be terminable if the event venue is changed.

## FEES

- Consider whether the sponsorship fee will be paid as a one-off fee or in instalments. Instalments may give better protection if the event is on-going or if the relationship is an unhappy one, although if this is a concern it may be worth considering whether the sponsor should have an ability either to claw back certain payments or cease to have liability for remaining instalments where the relationship deteriorates part way through the term.
- Consider if the sponsorship fees are only to be applied by the sponsored party for certain purposes.

## TAX

- Consider the tax implications of the sponsorship fee and (where relevant) of providing any related promotional products, particularly if there is an international component, as this may give rise to double taxation.
- Note the comment above in relation to image rights arrangements.

## INTELLECTUAL PROPERTY RIGHTS

- Consider whether the sponsor wishes to identify specifically the names and marks to be used (including details of any registered IP) in connection with the sponsorship.
- Consider whether the sponsor wishes to ensure that its name and/or trade mark are placed in an appropriate position only and that the sponsor has final approval as to its use, as well as any other endorsement of the brand by the sponsored party (e.g. in any advertising campaigns). If the sponsor has brand guidelines then these may also need to be applied.
- Consider if the agreement should also contemplate what will happen to any goodwill generated through the arrangement - a sponsor may wish to ensure that this follows ownership of the relevant marks.
- Consider whether the sponsor requires control over any IP-related proceedings.

## OBLIGATIONS SPECIFIC TO EVENTS

- Consider whether the times and dates of the event are firm and how these are described in the agreement, along with what happens if these change or the event is postponed or cancelled.
- Similarly, consider whether to include a list as to who will be responsible for which parts of the event and any specific requirements for the event (e.g. official licences or permits).
- Consider whether the sponsor requires that the event organiser has insurance or grants it an indemnity if a claim is brought against the sponsor for any liabilities arising out of the event.

## REGULATORY REQUIREMENTS

- Depending on the type of sponsorship deal, there may be regulatory issues to consider. For example, sporting association requirements or broadcasting codes of practice.

## COMPETITION LAW

- Depending upon the restrictive covenants and exclusivity provisions, consider whether competition law advice is required.

## SPECIFIC LEGISLATION FOR CERTAIN EVENTS

- Consider whether any special rules apply, prohibiting certain acts or use of certain wording (e.g. Olympic legislation).
- If a sponsor is not officially linked to any wider event or context in which the sponsored party is likely to operate, consider whether the sponsor has appreciated the legal impact and/or risks of any ambush marketing strategy.

Correspondingly, if a sponsor is looking to officially sponsor an event or organisation, consider how the sponsored party should be obliged to act against third party ambush marketers or, indeed, whether the sponsored party is able to do so. In the latter case, consider whether this should act as a catalyst to price chip or whether there are any other means of safeguarding sponsor investment.

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## KEY CONTACTS

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