

Sponsorship Agreements – Key points to consider

When entering into any sponsorship agreement, there are several key points which sports clubs should consider.

The Parties

Firstly, it is important that the agreement identifies the correct parties and includes any additional parties who may be required to deliver sponsorship rights such as use of a logo or name etc.

Clubs should also try to ensure that the proposed sponsor is good for the money. If there are doubts and the proposed sponsor is part of a larger group, clubs should look for a guarantee from another group company.

Term, Renewal, Termination and Consequences

Term

Although the length of any sponsorship will be a decision primarily for the sponsor, if a club is not comfortable with the proposed term then it should seek to negotiate this in order to establish whether a compromise can be reached.

When it comes to finalising an agreement, it is the norm to state an initial fixed term whereby both parties are contractually obliged to perform their various obligations (i.e. sponsor to pay, club to advertise sponsor etc).

Renewal options

Clubs may wish to build additional provisions into a sponsorship agreement to allow for the initial term to be renewed or extended. This renewal or extension could be subject to obtaining the consent of both parties or perhaps on the club meeting certain targets such as winning promotion.

Whilst clubs may be optimistic that its sponsorship will continue beyond the initial fixed term, there will come a point when it will need a final decision from the sponsor. Rather than simply relying on the sponsor to advise the club of this in good time, the sponsorship agreement could provide that if the sponsor does not extend its sponsorship by a certain date then the club has the right to speak to alternative sponsors before the term has expired.

Termination

If the sponsorship agreement is for a relatively long period of time, it may be appropriate to include a break clause to allow either party the opportunity to legitimately terminate the agreement.

Clubs should consider on what grounds it should be entitled to terminate a sponsorship agreement and make sure that these are included in the sponsorship agreement. Such grounds could include late payment of sponsorship monies or a change of control in the ownership of the sponsor

Where possible, clubs should try to resist any clauses in a sponsorship agreement which give the sponsor a right to terminate the agreement upon the relegation of the club. By way of compromise, clubs should consider offering to reduce the value of the sponsorship fees instead.

The termination clause(s) in a sponsorship agreement should be clear on what happens following termination. For instance, if the club or the sponsor has provided the other party with intellectual property such as logos etc, it will want something in the agreement which provides that this is returned to the owner as soon as possible following termination.

Another point worth considering for clubs when preparing or negotiating a sponsorship agreement is whether the balance of unpaid sponsorship fees should be paid up in full by the sponsor if it is the party in breach.

Sponsorship Fees

Calculation of sponsorship fees is another important point which parties should reach consensus on before any written agreement is entered into.

For instance, is the sponsorship fee going to be a fixed amount or will it be based upon other parameters such as the value of the sponsorship to the sponsor? Will the fee increase upon certain events occurring such as a cup win? Will promotion or relegation affect the amount of sponsorship which the sponsor will pay to the club?

Clubs should also consider the timing of payment. Will a lump sum in advance be most beneficial to the club or would it prefer to receive the sponsorship fee in instalments?

Of course, sponsorship is not always simply about the payment of cash for sports clubs. If a potential sponsor makes or provides goods and/or services which the club uses, it may be advantageous to negotiate a discount on the products and/or services as part of the sponsorship agreement. If the club wants to drive a really hard bargain, it could perhaps suggest that the sponsor throws in some of its products and/or services for free.

Obligations of the Sponsor

In addition to payment of the sponsorship fee, clubs should try to ensure that the sponsorship agreement obliges the sponsor to:-

- comply with the law
- avoid making any disrespectful or disparaging remarks about the club and/or any of its members or playing staff
- protect any intellectual property which the club has provided to it and to adhere to any restrictions upon the use of the intellectual property

Obligations of the Club

In exchange for the payment of cash (or additional benefits as discussed above), clubs will be expected to meet a number of obligations which will be set out in the sponsorship agreement. The extent of these obligations may vary substantially depending on whom the sponsor is and the type of sponsorship which it is providing.

However there are certain obligations which to appear in the majority of sponsorship agreements. These include an obligation to:-

- comply with the law
- promote the sponsor and its products and/or services
- grant the sponsor certain rights including advertising the sponsorship in the media and using the club's intellectual property
- adopt a professional approach and avoid any behaviour which may harm the reputation of the sponsor and/or its brand
- provide the sponsor with regular updates about the club (it is usually the case that bad news as well as good news must be delivered).

Force Majeure

In legal terms, a "force majeure" clause protects a party from liability if some unforeseen event beyond its control prevents it from performing its obligations under a contract.

Whilst this is a standard clause in the majority of legal agreements, it is important that parties agree what events the clause is to cover. For instance, if a club's sponsor was contractually bound to deliver 15 free rugby strips by a certain date under the sponsorship agreement but couldn't following a fire at its warehouse, one would expect the "force majeure" clause to be applicable in the circumstances.

However, if the sponsor was unable to deliver the strips simply because it had decided to sack some of its staff, the “force majeure” clause would not normally be applicable as this would be seen as an unforeseen event.

Clubs should take particular care when drafting or negotiating a “force majeure” clause so as to ensure that it covers compliance with regulatory requirements (i.e. governing bodies, league or cup sponsors, etc).

In the event of a “force majeure” event occurring, parties may choose to agree that the party in breach should be given further time to perform its obligations under the sponsorship agreement. If this is the case, parties should think carefully about how long this period should be for. If the party in breach is still unable to perform its obligations by the end of the extension, should the other party be entitled to terminate the agreement or renegotiate its terms?

Liability and Indemnity

Clubs should be aware that liability for death and personal injury cannot be excluded in the sponsorship agreement. They should however be encouraged to exclude liability for indirect loss or loss of profits on the part of the sponsor.

It is recommended that clubs try to cap liability and usually this would be at the sponsorship fee. This means that if the sponsor has paid the club £500 in sponsorship, the club will only liable to pay up to £500 should it breach any clause of the sponsorship agreement.

Clubs should consider obtaining public liability insurance – it should also try to ask for evidence that the sponsor has appropriate insurance in place for any products which it is delivering to club members, supporters etc.

Top tips

If your club is in discussions with a sponsor:-

- agree the terms of the sponsorship in advance and write it down. By doing so, there will be less scope for argument later
- keep your sponsor regularly updated on how the club is doing – include both the good news and the bad news
- establish who the primary points of contact will be for the club and the sponsor and appoint deputies
- make sure you have a written agreement

To see how we can help you, contact:



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