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Transactions involving IPL Franchises: Legal Due Diligence

With the recent auction and sale of media rights of the Indian Premier League ("**IPL**") by the Board of Control for Cricket in India ("**BCCI**") for over INR 480 billion (approximately USD 6 billion), IPL franchises are in the spotlight. Reports suggest that certain IPL franchise owners may look to capitalize on an improved valuation, and either sell a part (or all) of their shareholding in the legal entity that has bid for and owns the IPL franchise, or may even consider a public listing of such legal entity.

In this note, we look at key legal due diligence issues that may arise in connection with transactions involving IPL franchises.

REVENUE AND EXPENSES; MATERIAL CONTRACTS

A franchise currently derives revenue primarily from pay-outs by the BCCI – be it for participation or reward for performance, or from the media rights associated with each match. According to reports, 60-70% of the revenue of IPL teams is dependent on pay-outs from the BCCI. The BCCI in turn may generate revenues to pay each team through central sponsorships (including title sponsorship, e.g., Tata). IPL teams may generate additional income through local sponsorships (i.e., team sponsors rather than IPL sponsors), through sale of tickets and through sale of merchandise.

Due to the primarily source of revenue earned by each franchise being the BCCI, one of the key documents for legal review will be the agreement between the BCCI and the franchise (together with all other league related by-laws, policies and regulations applicable to the franchises) – these should also be reviewed for consent requirements for such transaction (e.g., the IPL Governing Council), or any other terms which may have an effect on the generation of revenue by the franchise following the transaction or which may impose additional costs.

Sponsorship agreements entered into by the franchise are significant and should be reviewed, including terms related to rights and duties of the sponsors, terms relating to revenue of the franchise, duration of contract, termination of contract and exclusivity arrangements with such sponsors (restricting the ability of the acquirer to enter into agreements with other potential sponsors). Agreements with the relevant venue owners for the lease of the venue should also be reviewed – opportunities to develop and maximize revenue from such venues will be a consideration for the acquirer. Given that IPL franchises do not own venues (and since such venues are generally owned by state cricket associations), there may not be much room for renegotiation. Agreements with merchandisers should also be reviewed.

On the expenses front, a significant cost for each franchise is the cost of purchasing and retaining players and recruiting coaches and other staff, in accordance with IPL rules. Each franchise would have entered into contracts of varying durations with players and staff – these contracts will need to be reviewed in view of the transaction. The terms of contracts with players (e.g., duration of contract and remuneration) are largely dictated by the auction price of such player at the IPL auctions, and may not be subject to review and revision following the transaction; however, such contracts should be reviewed for payments triggered by change in control or shareholding, if any.

REGULATORY ASPECTS

The target entity's compliance with applicable regulatory requirements should be considered, including registrations and approvals required for its business (*inter alia*, from a taxation law perspective and from an employment law perspective), making regulatory filings, maintaining books and records as required, etc. Analysis may also be required to determine if any regulatory approvals are required for the transaction, such as competition/anti-trust approval/filing.

Confirmatory due diligence is also recommended to ensure that the target entity has complied with applicable investment laws, including applicable foreign exchange regulations and anti-money laundering laws. Key investment regulatory aspects to be considered include: (i) the investor should not be an entity incorporated in, and should not have any beneficial ownership of an individual that is a national of or a resident of, any country that shares a land border with India; (ii) round-tripping regulations should not be breached (i.e., any entity incorporated outside India with investment from persons in India, should not have any investments in India; and (iii) conditions for foreign investment into India and/or overseas investment by persons resident in India should be complied with (including nature of investments, pricing guidelines, etc.)

The brand associated with the franchise is a significant asset. The potential acquirer should confirm that the intellectual property is housed in the target entity being acquired (and not a group company or an affiliate of the target). Further, integrity due diligence may be required to identify any ethical, reputational or cultural issues.

Another key consideration for a potential investor will be key outstanding disputes, if any, including with regulatory authorities, which may have a significant impact on the revenue or operations of the target entity and the IPL franchise. For example, it is a matter of public record that the Enforcement Directorate has issued notices regarding violation of the foreign exchange regulations to certain franchises in the past.

CONCLUSION

There is likely to be increased M&A activity involving IPL franchises. Legal due diligence will play a significant role in assessing the risks and liabilities in connection with these investments. The aspects highlighted above in this article are key aspects of the legal due diligence that each investor should consider for such investment. Review of key contracts (in relation to revenue sharing with BCCI, sponsorship agreements, agreements for use of venue and merchandising agreements, and contracts with players, coaches and other staff should be carefully reviewed). Legal due diligence of regulatory compliance is also a key aspect to mitigate risks and potential liabilities associated with such an investment.

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