

ESPORT LAW

CHALLENGES, TRENDS,
PREDICTIONS



MAVERICKS

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INTRO

The time when playing computer games was just a leisure activity for a small group of amateur enthusiasts, gathering from time to time at garage lan parties is long gone. In recent years, there has been a significant professionalization of computer game players around the world and in the Czech Republic and the emergence of a completely new competitive industry – [professional computer game playing or esports](#).

As the esports phenomenon gradually rises up in popularity charts and becomes more and more mainstream, the entire esports ecosystem is being professionalized alongside the associated [search, creation and exploitation of new business opportunities](#). In 2020 (and newly in 2021), we have seen several multi-million dollar investments in esports teams in the Czech Republic, which have the potential to shoot them into leagues that Czech teams could only dream of so far.

However, the world of esports is not just about teams winning tournaments and ranking as top players. It would not function without the involvement of various partners, whether endemic or operating in seemingly unrelated fields. Equally indispensable to the [whole ecosystem](#) is a number of other entities – sponsors, competition organisers, esports agencies, associations and, of course, investors, without whose trust and willingness to take risks the professionalisation of the industry would never have happened.

As esports is a highly specific and constantly evolving industry, a number of unique legal issues arise within it. To help navigate these legal issues, we have decided to compile an overview of the [top eight legal challenges](#) we perceive to be most important in esports, based on our experience and discussions with our clients and friends active in esports, while summarizing the most anticipated [trends and predictions](#) for 2021.

We believe that this brochure will be useful for esports organisations and other members of the Czech esports ecosystem and will contribute to the further development of the industry.

Any questions? Feel free to contact us at info@mavericks.legal.

Jaroslav Mencik / Partner at Mavericks

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TOP 8 LEGAL CHALLENGES IN ESPORT



#1 PLAYER CONTRACTS

Proper settings of the conditions of cooperation between the team and the player is extremely important for both parties. There is nothing worse than when a club and a player have a falling out in the middle of the season and the team's roster falls apart the day before a tough game. There are **2 basic ways** to structure a contractual relationship:

1) AN EMPLOYMENT RELATIONSHIP

The first option is an employment contract, which can be part-time. This option provides players with the protection of the Labour Code, but on the other hand the narrow limits set by the legislation may not suit the specifics of the esports world. A bonus for players may be that the administration related to salary payment, taxes and levies is largely handled by the club. On the club side, however, the insurance levies make the total cost of the player's engagement higher. In addition, more flexible forms of employment can be chosen, namely a performance or employment agreement. These have limits on the number of hours a player can "work" and benefits in terms of levies.

2) THE PLAYER AS A SELF-EMPLOYED PERSON

Like traditional athletes, esports players can, under certain conditions, carry out their activities as self-employed persons under a trade licence. In this case, the club pays them remuneration on the basis of invoices issued by the player. The advantage is the high flexibility allowing the club and the player to define the terms of cooperation. However, the player must maintain a valid business licence and comply with tax and levy obligations. Alternatively, the player can carry out activities without a trade licence as an independent profession. However, this option is less tax advantageous for the player.

Regardless of the cooperation model, we recommend **considering the following points**:

- How do you want to reward players? Do they share the tournament winnings?
- How can the player terminate the contract?
- Must the club allow the player to transfer to another club?
- Can the club use the player's photographs and other personal information for marketing?
- What happens if a player cheats or uses doping?
- Does the player have any lifestyle obligations?

#2 CONTRACTS WITH PARTNERS & SPONSORS

A positive relationship with partners and sponsors is crucial to the success of any esports organisation. Do you want to avoid high contractual penalties, bad PR and loss of trust between partners and sponsors? Then we recommend paying attention to the following aspects when entering into contracts with partners and sponsors:

- Be careful whether the cooperation is **exclusive or non-exclusive**. If you promote GG brand gaming peripherals, can you also promote LOL brand peripherals?
- Is the performance from the partner dependent on any KPIs? Are they achievable? What if they are not achieved?
- How are the contractual obligations set?
- Are there **penalties** or is a termination of the collaboration possible due to non-compliance?
- Do the obligations to the partner also apply to the player? Or can players have their own partners?



#3 INVESTING IN ESPORTS

Recently, the frequency of investment in esports has been increasing. Investments are being made in gaming technology (e.g., player learning software) or other innovative products aimed at gamers (e.g., nutritional supplements), but also in gaming teams and organisations themselves.

Although the esports environment is very specific, in our experience, esports investing is fundamentally governed by similar rules as venture capital investments in startups or traditional M&A transactions. As a rule, it will therefore need to be determined whether the transaction will be a debt financing (convertible loan) or an equity investment. The following 3 areas are key in setting the terms of any investment:

1) ECONOMIC CONDITIONS OF THE DEAL

- How big is the investment?
- Is the investment provided in multiple tranches?
- How large a stake in the company is the investor acquiring?
- What is the valuation of the company?

2) CONTROL & CORPORATE GOVERNANCE

- Is the investor personally represented in the company's bodies?
- What decisions require an investor approval?
- Are pre-emption rights, drag-along, tag-along, etc. applicable to share transfers?
- How will other investment rounds be handled?

3) CLUB MANAGEMENT

- What is the composition of the company management?
- Does vesting apply to the founder?
- Will an ESOP (virtual/real) be implemented in the company?



#4 ESTABLISHING AN ESPORT ORGANISATION

Choosing the right form for a gaming organization is important in terms of the future intentions of the founders. In the Czech Republic, we can meet most often with gaming organizations in the form of registered associations and limited liability companies.

→ **Associations** are established to support their own members and the articles of association need to define the purpose for which the association is established. It should be borne in mind that any profits from the activities of the association can only be used for the administration of the association or for the purpose for which the association was formed. At least 3 persons are required to form an association and the association is formed on the date of registration in the register of associations.



→ **A limited liability company** is the most common type of company that can be formed for business purposes. The establishment of a limited liability company requires a single founder, a symbolic CZK 1 paid into the registered capital and registration in the Commercial Register. The advantage of a limited liability company is the unlimited possibility to dispose of profits and, of course, the protection of the shareholders, who are not liable for the company's obligations.

If your goal is to build a great business project and you are thinking about finding investors or distributing profits, we definitely recommend setting up an LLC. Associations, on the other hand, are suitable for organizations that are not primarily business-oriented.

#5 CHEATING

Who hasn't tried to improve their stats or abilities while playing games with various forbidden assistants, aimbots, radars or other cheats, right?

While cheats may not be such a big deal in casual gaming, in the world of professional esports, their use is a potential disaster not only for the cheating player, but also for his team and the entire club.

As tournament organizers are constantly tightening their crackdown on cheaters, it is essential to always **familiarize yourself thoroughly with the rules** of the event in question and to regularly inform all players and other team members of the prohibited cheating behavior and its potential consequences.

Even one reckless use of cheats can have a significant impact on a player's career and damage the club's reputation. A player's account can be banned, disqualified from a tournament, forfeit tournament winnings, or permanently or temporarily banned from professional tournaments, often regardless of whether the player cheated while training at home or representing the club in a competition. Game operators are really adamant about this.

#6 DOPING

Like regular sports, esports are plagued by problems with players using illegal substances. Not only cheating, but also doping can significantly affect the promising career of a player or an entire club.

And the response from gaming organisations has not been long in coming. For example, in response to the Cloud 9 scandal, the ESL, one of the largest gaming organisations that organises tournaments worldwide, banned substances such as **adderall, marijuana, cocaine and various steroids** from its rules – substances that promote concentration and help players perform better. ESL rules state that the use of these substances can result in sanctions such as a ban of between 1 and 2 years, forfeiture of prize money or invalidation of competition results.

We therefore recommend that you always read and follow the rules of the leagues and competitions in which your team participates regarding the use of banned substances.

#7 BETTING ON ESPORTS

Every avid football or hockey fan will occasionally bet on their favourite, and it's becoming increasingly apparent that esports will be no different. After all, even the big bookmakers see esports betting as the future, as evidenced by their numerous partnerships with competition organisers, clubs and other players in the esports ecosystem.

Betting is an activity that is regulated by the Gambling Act and it is therefore necessary to highlight some aspects that apply in relation to esports.

First of all, bettors should keep in mind that a bet in esports may not only be considered a traditional **financial bet**, but also a bet made using **cryptocurrencies, virtual coins, tokens, in-game items or skins** may meet the definition.

Betting also generally excludes persons who participate in the competition and can directly or indirectly influence the course of the competition. This applies not only to betting on your own team, but also on other teams or the final outcome of the competition. Similarly, it is generally forbidden for a person working for the organiser of the competition to take part in betting.



#8 BRAND PROTECTION

Building a real lovebrand should be the goal of every esports organization and gaming startup, because a large number of followers and fans opens up additional monetization opportunities. Wondering what you can do to protect your brand?

Register your [trademark](#)!

A trademark can be any word, graphic or other mark you want to use to distinguish yourself from your competitors. In practice, we most often see trademarks covering the name or graphic logo of an esports club or a technology product used in the esports world.

The main purpose of the trademark is to strengthen the brand and to highlight its privileged position in the market. By registering it in the relevant register, the owner acquires the exclusive right to use it for a specified period of time and can therefore easily prohibit anyone else from using the same or similar sign.

Remember that a trademark is usually only created by formal registration with the relevant office, so you need to time your application correctly and decide in which countries the protection will apply.



KEY TRENDS AND PREDICTIONS FOR 2021



KEY TRENDS & PREDICTIONS

Esport in the Czech Republic has seen significant professionalisation in 2020. While the pandemic of the covid-19 disease has prevented some major esport tournaments from taking place, it has also sidelined traditional sports, causing players and fans to turn their attention even more to the online world of esports.

The Czech Esports Association estimates that the size of the esports market in the Czech Republic in 2020 will be around CZK 50 million. With experts predicting global growth of tens of percent per annum in the industry in the coming years, we believe it can be expected to develop rapidly. And what key trends and events do we expect in 2021?

1) FURTHER INVESTMENT IN TECHNOLOGY & CLUBS

Venture capital funds and other investors will increasingly look for investment opportunities in esport and gaming. We will therefore see further investment in both prospective teams and technology taking the form of software products designed for gamers, tools used for online match betting or nutritional supplements etc.

2) THE INCLINATION OF TRADITIONAL BRANDS TOWARDS ESPORTS

More entrepreneurs will realise that esport represents a unique channel for marketing and communicating with young consumers from the emerging Generation Z. As a result, we will see more interest from traditional brands to partner with esport clubs and tournaments, which will translate into an influx of funding into the ecosystem.

3) PROFESSIONALISATION OF PLAYERS

As the sporting level of Czech esport clubs increases, so will the demands on player remuneration. Therefore, we can expect a broad discussion on the form of player contracts and the resolution of some pressing issues, such as transfers between clubs or participation in competitions organised by other organisers. We also estimate that there will be increasing pressure to create an organisation that represents the interests of players in a unified way vis-à-vis other participants in the ecosystem.

KEY TRENDS & PREDICTIONS /PART 2/

4) INCREASE IN POPULARITY OF MOBILE ESPORTS

Surprisingly, the viewership of esports matches in mobile games such as PUBG Mobile is starting to catch up with that of traditional PC games around the world. More and more of the esports scene will be moving in this direction.

5) CONNECTING TRADITIONAL SPORTS WITH ESPORTS

In 2020, a number of football and hockey clubs in particular have announced their entry into the esports field. As this form of cooperation makes sense for both forms of competition and brings new (not only) marketing opportunities, we expect more similar collaborations to be established in 2021, even beyond football and hockey.

6) THE IMPORTANCE OF IN-GAME AND NON-GAME CONTENT WILL GROW

Most esports organisations recognise that their strength lies in their ability to generate content that is consumed by fans – consumers. As younger users in particular gradually turn away from television to streaming platforms such as Twitch, the ability to produce and monetise such content becomes more important. The treatment of the rights to such content will be key.

7) THE MOVE OF CLUBS TOWARDS ENTREPRENEURIAL LEGAL FORMS

The divide between amateur and professional organisations will continue to widen. In the professional arena, we will see a move away from non-business forms such as registered associations and towards business forms such as limited liability companies.

8) THE INCLUSION OF ESPORTS AMONG SPORTS

Our boldest prediction is the classification of esports as a classic sport. This would further popularise esports and at the same time open the way for public support of esports.

MAVERICKS ESPORT & GAMING TEAM



JAROSLAV MENČÍK

Jaroslav is a partner at MAVERICKS, where he is responsible for video game law, including esports & gaming, IT law and intellectual property. He has worked for more than 10 years in leading international law firms and during his career has gained experience in among others concluding investment agreements in gaming, establishing esports organizations or setting up contracts with professional esports players. Jaroslav is an enthusiastic advisor to many esports organizations, gaming studios, startups and investors. He studied law at Masaryk University in Brno and New York University in the USA and economics at the Czech University of Life Sciences in Prague.

Tomáš, founder of MAVERICKS, is a leading expert in venture capital transactions in the Czech Republic and a specialist in IP and IT law. He has advised many successful technology companies, venture capital funds, angel investors, incubators and accelerators. He has successfully negotiated more than 100 venture capital and private equity transactions with Czech and US law firms in recent years, some of which were directly related to the gaming sector. Tomas is a lecturer at the Charles University Law School and holds the title of "Innovative Lawyer of the Year 2019".



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MICHAEL GRANÁT

Michael combines extensive experience from his law practice in leading Czech law firms and from his many years of experience as an in-house lawyer for a large corporation with several thousand employees. He specialises in employment law, sports law including esports and representing clients in litigation and arbitration. He also deals with IT law and intellectual property law, which are increasingly penetrating the field of employment and sports law. Michael has gained valuable experience in setting up employee relations and relationships between players (athletes and esports players), clubs and sports agents.

ABOUT MAVERICKS



MAVERICKS is a boutique law firm based in Prague focusing on new technologies, intellectual property, IT & software law, venture capital investments and M&A. We are proud advisors to many amazing startups, technology and software companies, investors, game studios and esports organizations.

We have a soft spot for esports and gaming, which is why we have created a team specializing in this area. Over the past few years, we have gained experience in, for example, negotiating contracts for investing in gaming technology, setting up contracts between esports teams and gamers, setting up esports organizations, protecting the intellectual property of gaming companies, protecting personal data (GDPR) or registering a trademark for a gaming startup. We regularly lecture and publish on topics related to video game law.

We have a top-notch team, the core of which consists of experienced lawyers who have worked for many years in leading international law firms with offices around the world.

Using state-of-the-art technology, we provide our clients with premium legal services with an emphasis on high value added.

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