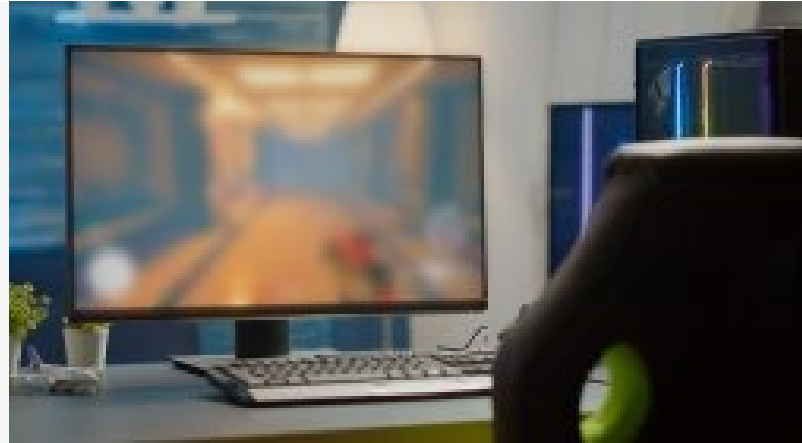


ESPORTS AND ARBITRATION

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Videogame athletics or ‘esports’ are a vibrant and growing part of the Southeast Asian sports markets, both in Thailand and beyond. But what do you need to know about them?

In this article, part of a series WFW is authoring on sports arbitration, we explain esports, describe the industry’s structure, highlight common challenges, consider how disputes are resolved and provide some recommendations to assist you as you navigate the exciting world of esports.

In the first article of this series, we examine the Court of Arbitration for Sport – the world’s premier forum for resolving sporting disputes available [here](#).

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WHAT IS ESPORTS?

Electronic sports (“esports”) is a form of athletic competition using video games. Esports usually involves organised, multiplayer competitions between professional teams who compete in video games for prizes. Esports can be played on various platforms, including personal computers (PC gaming), consoles (Xbox and PlayStation) and mobile devices (Android and iPhone). Esports also spans diverse genres, from first person shooters (*Call of Duty*; *Counter-Strike: Global Offensive*) to real-time strategy competitions (*Defense of the Ancients*; *StarCraft*). This variety of offerings has helped to attract a wide range of players and fans.

Esports has grown exponentially in recent years. Born in Asia in the aftermath of the 1997 financial crisis, esports is now a global phenomenon. Game developers and publishers host esports leagues and globe-spanning tournaments, attracting massive virtual and physical audiences. The 2022 World Championships for *League of*

Legends, a battle arena sensation developed by Riot Games, attracted 5.1m concurrent viewers.¹ Streaming platforms like YouTube and Twitch are integral to esports’ popularity, allowing fans to tune in wherever they are in the world.

Esports has the potential to become a mainstream form of entertainment, with its combination of high-level competition and engaging gameplay attracting the younger demographics coveted by advertisers. Its growth is spurring innovation in the gaming industry, as developers create new games and features specifically designed for the esports market. A game with a vibrant esports scene and loyal following can act as a money maker for years to come, so developers are heavily invested in growing their customer base.

Despite its growing popularity, esports faces challenges. Critics argue that it is not really a “sport” at all – its lack of physical exertion and premium on mental strategy little resembles traditional sports. Others claim that esports is a bubble, with mammoth valuations but little sustained profit potential. Nonetheless, esports is gaining credibility. The International Olympic Committee (“IOC”) is even considering esports for future Olympic games, reflecting the growing global acceptance of esports as a legitimate sport.

WHO ARE THE MAJOR ESPORTS PARTICIPANTS?

The esports industry has a variety of invested parties, including:

- **Game developers and publishers:** These organisations play a major (perhaps outside) role in esports. Beyond designing the games themselves, they also organise many esports tournaments and leagues, setting the structure and fronting prize money in return for franchise fees and broadcast deals. Game developers and publishers also update their games constantly, trying to ensure that the esports experience never calcifies. Companies with major esports presences include Riot Games, Valve and Blizzard Entertainment;
- **Teams:** Esports athletes usually compete in teams or clans, often organised around specific games. Like traditional sports teams, they have their own unique names and logos, and a hierarchical structure with designated leaders and officers. Well-known successful international teams include FaZe Clan and Cloud9; and
- **Sponsors:** Esports sponsors include a wide range of companies and organisations, from game publishers and hardware manufacturers to fast food franchises, clothing brands and energy drink companies. Sponsors usually provide financial support in return for branding and marketing exposure at esports events.

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ARE ESPORTS “REAL” SPORTS?

It’s controversial, but the answer is increasingly “yes.” Esports is enjoying broader acceptance alongside traditional sports. Esports lack many of the traditional physical skills common to sports in general, focussing on mental talents like strategy and problem-solving. However, games demand extremely quick reflexes, great hand-eye coordination and a string of precise movements. Top professional gamers routinely perform as much as 400 actions per minute, like mouse clicks and keystrokes." The physical demands – coupled with the pressure cooker environment of professional gaming, where teams routinely practice for 12+ hours a day – eventually add up. Esports athletes are younger on average than their traditional counterparts and have shorter careers."

Recognising esports' growing popularity, countries are beginning to classify esports alongside traditional sports. Russia became the first country to recognise esports in 2001, cataloguing "cybersports" as an official discipline.^{iv} Thailand officially recognised esports in 2021, and athletes are now supported by Sports Authority of Thailand and the Ministry for Tourism and Sports.^v In the United States, gamers of international renown are eligible for P1-A visas, much like traditional athletes.^{vi}

International sporting bodies, however, have been slower on the uptake. The International Olympic Committee has acknowledged esports' growing popularity, even conducting an "Olympic Virtual Series" in the runup to the 2020 summer Games in Tokyo, Japan.^{vii} The 2024 Summer Olympics in Paris will likewise feature virtual events. However, the IOC has raised concerns regarding the lack of traditional physical skill in esports and highlighted game content issues like excessive violence.^{viii} Still, esports has achieved a level of legitimacy among regional competitions, particularly in Asia. The 2007 Asian Indoor Games was the first sports tournament featuring esports alongside traditional sports, and the 2022 Asian Games in Hangzhou, China, will feature esports in medal events.^{ix}

WHAT'S THE ESPORTS SCENE LIKE IN SOUTHEAST ASIA AND THAILAND?

Esports was born in Asia, particularly South Korea. The explosion of broadband internet in the late 1990s gave would-be gamers unprecedented access to online competition. In South Korea, gaming cafes (or PC bangs) cropped up everywhere, fuelling the rise of early esports games like *Starcraft*. The term esports itself was first coined in South Korea, the brainchild of Park Jie-Won, a former Minister of Culture, Sports and Tourism.^x

The Asian market now commands roughly 57% of the US\$1.1bn global esports scene, with some 1.6bn players.^{xi} The region's professional teams enjoy unprecedented success, regularly winning world champions in games like *League of Legends*.^{xii} Southeast Asia is the fastest-growing esports market in the world, according to some estimates.^{xiii} The advent of widespread mobile gaming is a key factor – there are some 250m mobile gamers in Southeast Asia, about 82% of the regional population.^{xiv} Female esports fans are particularly important, accounting for 49% of the Southeast Asia market.^{xv}

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Thailand is the single biggest esports market in the region, boasting 32m gamers. It is seeing massive growth in mobile gaming, as 5G networks proliferate. 88% of Thai esports fans use their phones to play and watch esports, often on YouTube or Twitch.^{xvi} Thailand has hosted esports tournaments like *Defense of the Ancients* competitions, and the fast food conglomerate KFC recently bought naming rights to Talon Esports, a Thai team.^{xvii}

Esports does face some headwinds in Asia. China, an early esports adopter and major force on the professional scene, has soured on video games in recent years. Chinese critics worry over games' perceived social ills, and new laws limit Chinese children to just three hours of gaming a week.^{xviii} In 2022, Blizzard announced that it was suspending operations in China after the lapse of its 14-year partnership with Chinese provider NetEase, signalling a possible exit from the market entirely.^{xix}

HOW ARE ESPORTS DISPUTES RESOLVED?

"Thailand is the single biggest esports market in the region, boasting 32m gamers. It is seeing massive growth in mobile gaming, as 5G networks proliferate."

As esports explodes, so have controversies like doping, match-fixing and cheating.^{xx} Players have thrown matches for money, exploited in-game bugs to gain unfair advantages and used banned substances like Adderall to increase focus and performance. *Counter-Strike: Global Offensive* has seen massive match fixing scandals, with some earning FBI probes.^{xxi} The game is also immersed in an ongoing bug abuse scandal, as glitches allowed team coaches to access unusual parts of maps and spy on enemy teams.^{xxii} Other games like *Overwatch* and *Defense of the Ancients* have seen their own share of troubles.^{xxiii}

The lack of an accepted global sanctioning body is a key problem. Currently, esports has no court of final appeal like the Court of Arbitration for Sport. In practice, game publishers and tournament organisers routinely battle for power to hear and decide controversies. Gaming companies often keep matters in house, using policy arms to handle governance issues.^{xxiv} This creates a splintered state of play with little decisional consistency and weak global governance.

Independent commissions do exist, like UK-based Esport Integrity Commission ("ESIC"), which specialises in cheating and doping disputes. ESIC partners with esports institutions to police suspected bad conduct; after an investigation, findings are passed on to leagues and tournament organisers.^{xxv} The World eSports Association also launched the Arbitration Court for Esports in 2016, which has seen some acceptance. Nonetheless, these institutions depend on industry participants for buy-in, which means their authority is often uncertain and incomplete. The IOC has protested the lack of an independent, widely accepted sanctioning body when considering esports for future Olympic Games.

Beyond the headline scandals, esports participants routinely find themselves in work-a-day commercial disputes like disagreements over partnerships or player performance. These disputes are generally decided under the parties' contracts, which may provide for mediation, arbitration, traditional court litigation or some combination of the three. Commercial jurisprudence is well developed in most countries and does not face the same headwinds as unique esports controversies, which lack a robust line of precedent or an obvious final authority.

CAN ARBITRATION PLAY A ROLE IN ESPORTS?

Yes, certainly. Arbitration is a form of alternative dispute resolution allowing parties to resolve their problems privately, outside the ambit of traditional courts.

Arbitration is particularly well-suited for esports, a nascent industry with a still-developing body of rules and regulations. Controversies are common, and formal methods of resolving those controversies aren't yet set.

For esports participants, arbitration offers the following benefits:

- **Customised proceedings:** Parties can customise the proceedings to fit their needs, including by choosing arbitrators and attorneys who boast specialised technical knowledge and a familiarity with the esports scene;

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- **Privacy:** Arbitration is usually private and confidential – ideal for the world of esports, where reputations and sponsorships can be easily damaged by public disputes;
- **Speed and cost:** Arbitration is often faster and more cost-effective than litigation, making it attractive for parties who need quick ends to controversies or who can't afford protracted court procedures; and
- **Legal surety:** Arbitral awards are enforceable in courts as final judgments, protecting parties' legal rights.

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Commercial arbitration, however, is not a complete substitute for an accepted global sanctioning body. As esports continues to professionalise, more disputes will arise on an array of issues. Neutral forums are important, particularly in cases of cheating or other misconduct. A single dedicated global institution could provide a clear, competent and unbiased forum for settling these issues. It could establish consistent standards and procedures for resolving disputes in the esports industry. It could also generate an evolving body of jurisprudence attuned to esports' specific needs, which could guide future decisions. Over time, this precedent and practice will promote trust and credibility – and could ensure the mainstream acceptance of esports as a legitimate form of competitive sport.

The Court of Arbitration for Sport ("CAS") can potentially play a role here.^{xxvi} CAS can serve as the final appellate body for any sporting organisation, if specified by that organisation's regulations. Additionally, CAS's commercial arm routinely hears

disputes arising out of normal commercial dealings like sponsor partnerships and athlete contracts. However, even though CAS makes a point of interpreting "sport" broadly, it has not yet recognised esports and has yet to arbitrate any esports decisions. Even if it did so, there's no guarantee CAS's current arbitrator roster has sufficient gaming knowledge to adequately handle esports controversies. Because of this, there are increasing calls for a specialised "eCAS" that can hear a wide variety of technical disputes related to gaming. For more information on CAS and its operations, see our previous article on the topic [here](#).

In the absence of a global body, regional esports centres may prove useful. In Thailand, the Thailand Arbitration Center ("THAC") – the arbitration institution established under the Act of Arbitration Center B.E. 2550 (2007) – has an arm devoted to sporting disputes, which can also handle esports matters.^{xxvii}

TAKEAWAYS

Are you interested in esports investment or already involved in esports activities? As you think through your commercial dealings, consider the following items:

- **The nature of your esports relationship:** What's the nature of your involvement in the esports industry? Game developers, publishers, sponsors, teams, organisers and other entities will all have varying legal needs. Strategise how to prioritise and address yours;
- **Future disputes:** What controversies are you likely to see? If it's a normal commercial dispute, consider commercial arbitration before experienced arbitrators with broad business backgrounds. If technical gaming aspects are involved, consider expert adjudication or arbitration before decisionmakers with sufficient expertise to provide reliable decisions;

- **Governing law:** What laws apply to your activities? Is there a developed line of sports jurisprudence, especially on esports issues? Is your jurisdiction friendly or hostile to esports matters?
- **Esports regulations:** Are your activities governed by a publisher's requirements or an organiser's tournament rules? Ensure you know exactly what you're operating under, how disputes are resolved and the types of obligations you need to meet;
- **Dispute resolution forum:** Do the contract or relevant regulations provide for mediation, arbitration or litigation? What are the procedural prerequisites you need to follow to ensure your dispute is handled properly?
- **Speed:** Will your matters need to be resolved quickly? If so, consider mediation, expert adjudication or expedited arbitration before a single arbitrator on an accelerated timeline;
- **Cost:** What are the sums at stake, and how much can you afford to spend on legal proceedings? Arbitration is generally quicker and cheaper than litigation. Consider what approach works for your needs and budgets;
- **Privacy and confidentiality:** Are sensitive issues (like cheating or doping) at play? Consider arbitration, which is almost always private and confidential. You can also opt for heightened confidentiality requirements in your contracts and in the arbitration procedures themselves, providing your counterparty agrees;
- **Enforcement:** Do you need legal surety around your disputes results? Arbitration awards are generally enforceable just like court judgments and the enforcement process is often faster.
- **Local esports institutions:** Who are the major players in your local esports scene? Consider connecting and collaborating with developers, teams, sponsors and governing institutions who maintain a presence in your target market; and
- **Legal counsel:** Do you have sophisticated legal representation with good experience in sports (esports in particular)? Watson Farley & Williams maintain a deep bench of lawyers with strong sports law experience and can assist you across all aspects of your esports endeavours.

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- [i] Esports Charts, *Worlds 2022 sets new League of Legends esports record with 5.1 million concurrent viewers* (6 November 2022), available [here](#).
- [ii] GameQik, *The Top 10 Quickest Esports Players in the World* (5 March 2020), available [here](#).
- [iii] The Washington Post, *Esports stars have shorter careers than NFL players. Here's why.* (19 April 2022), available [here](#).
- [iv] World Esports IESF, *Russian Esports Federation – IESF's Member Nation* (14 October 2021), available [here](#).
- [v] Yahoo! News, *Thailand now officially recognizes esports as a professional sport* (25 September 2021), available [here](#).
- [vi] VisaPro, *P1 Visa for eSport Professionals: Let the USCIS Game Begin!*, available [here](#).
- [vii] Olympics.com, *The Olympic Virtual Series* (22 June 2021), available [here](#).
- [viii] BBC, *Esports 'too violent' to be included in Olympics* (4 September 2018), available [here](#).
- [ix] Dexerto, *8 esports titles confirmed as medal events at 2022 Asian Games including League & Dota 2* (8 September 2021), available [here](#).
- [x] Dal Yong Jin, *Historiography of Korean Esports: Perspectives on Spectatorship*, *International Journal of Communication* (2020), available [here](#).
- [xi] Tech In Asia, *A look into the rise of esports and mobile gaming* (3 February 2020), available [here](#).
- [xii] VOA, *South Korea's DRX Crowned League of Legends World Champions* (6 November 2022), available [here](#).
- [xiii] NikkeiAsia, *Southeast Asia's red-hot esports scene draws global brands as sponsors* (21 October 2022), available [here](#).
- [xiv] Asia Sports Tech, *What Makes Asia an Esports Powerhouse*, available [here](#).
- [xv] ONE Esports, *Thailand ranks top in Southeast Asia's gaming and esports market with 32 million gamers* (13 January 2022), available [here](#).
- [xvi] Nielsen, *The growth of sport and esport in Thailand* (June 2021), available [here](#).
- [xvii] Esports Insider, *Talon Esports partners with KFC Thailand* (29 January 2021), available [here](#).
- [xviii] CNN Marketplace Asia, *China bans kids from playing online video games during the week* (31 August 2021), available [here](#).
- [xix] Polygon, *World of Warcraft, Overwatch and more pulled in China over Blizzard NetEast clash* (17 November 2022), available [here](#).
- [xx] Timo Schober and Georg Stadtmann, *The dark side of e-sports – An analysis of cheating, doping & match-fixing activities and their countermeasures*, *International Journal of Esports* (23 July 2022), available [here](#).
- [xxi] BBC, *FBI probes match-fixing in Counter-Strike eSports* (6 April 2021), available [here](#).
- [xxii] Wikipedia, *Counter-Strike coaching bug scandal*, available [here](#).
- [xxiii] Engadget, *'Dota 2' team kicked from \$15 million finals for using mouse cheat* (25 June 2018), available [here](#).
- [xxiv] Bird & Bird, *Esports Disputes: Choosing your battleground* (18 January 2018), available [here](#).
- [xxv] The Esports Integrity Commission, *Who We Are*, available [here](#).
- [xxvi] Watson, Farley and Williams, *Sports Arbitration: CAS, TCAS and Everything In Between* (28 November 2022), available [here](#).
- [xxvii] Thailand Arbitration Center, *Dispute resolution center: Sports Arbitration Comes To Thailand with TCAS*, available [here](#).

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