

# MORI & PARTNERS

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## Fair and Square?

## Understanding Esports Player Contracts in the Japanese Market

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### Summary

This article provides an overview of various legal considerations pertaining to player contracts in the Japanese esports industry. Topics covered include restrictions on termination of player contracts, players' publicity rights, restrictions on player transfers, rights related to players' game accounts, and special considerations when dealing with players who are minors. The dynamic nature of esports requires flexible, comprehensive contract structures, which must also comply with Japan's Civil Code, Anti-Monopoly Act, etc. as explained below.

### Introduction

As eSports increasingly permeates society and more eSports players begin to operate professionally,

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the importance of the player contracts between eSports players and their teams is growing.

In standard business transactions, the importance of signing contracts with business partners goes without saying. Yet, as of July 2023, there are still instances in the Japanese traditional sports industry where the relationship between a player and a team proceeds based solely on oral agreements, with no signed contract in place. This trend is not uncommon in the eSports industry either. As a result, there have been instances where, due to a lack of signed contracts, disputes over the scope of work and the amount of compensation have arisen between players and teams. In order to prevent such issues, it is essential to properly draft and execute player contracts.

Furthermore, while templates for player contracts in Japanese professional sports can be found across the internet, because of their generic nature, they do not necessarily cater to the unique characteristics and needs of each player or team. Hence, even while using the templates as a base, it is necessary to make modifications suited to individual cases.

In this article, we will explain the potential pitfalls to watch out for, taking into account the legal nature of player contracts in Japanese eSports.

### **Legal Nature of Player Contracts – Restrictions on Termination of Player Contracts**

The legal nature of player contracts can be broadly classified into two types: (1) mandate contracts (or quasi-mandate contracts) and (2) employment contracts. Determination of which type the contract falls under is not solely based on the title of the contract. Instead, it is judged on a case-by-case basis, considering the terms of the contract and the nature of the tasks involved.

In cases where the contract is deemed an employment contract, the eSports player qualifies as an “employee” under Japan’s Labor Standards Act. Thus, the team, as an employer, is required to comply with various labor-related laws and regulations (such as work hours and wages). Furthermore, if a team unilaterally terminates its contract with a player, this constitutes dismissal under the Labor Contracts Act, the validity of which is judged under stringent criteria.

Specifically, Japan's Labor Contracts Act stipulates that “dismissal shall be invalid as an abuse of rights if it lacks objectively reasonable grounds and is not deemed appropriate under general societal norms.” When compared with Western countries, it is observed that the Japanese courts often favor employees when determining the validity of a dismissal. There are frequent instances where, despite the employer's conviction that it is within its rights to terminate an employee, the courts have later nullified the dismissal. This often results in the retention of the employee's status, along with

the order to compensate the dismissed employee, which may include back pay.

On the other hand, if a player's contract is a mandate contract and the player does not qualify as an employee under labor law, the strict dismissal regulations under labor law do not apply.

Therefore, employers should carefully consider (i) whether players qualify as employees under labor law, and (ii) even if they do, whether the requirements for dismissal under the Labor Contracts Act are met.

The court considers the following factors and determines the "employee" status on a case-by-case basis.

- (a) The freedom to accept or reject job assignments and work instructions;
- (b) The presence or extent of directives regarding the content and execution of tasks;
- (c) The management of the workplace and working hours;
- (d) The possibility of substituting the provider of labor;
- (e) The nature of the compensation with respect to labor;
- (f) Ownership of necessary machinery and equipment for labor;
- (g) The degree of exclusivity, and;
- (h) The bearing of public dues (existence or non-existence of withholding tax and social insurance deductions).

As to eSports players, if their work essentially involves individual skills and discretion, has fewer time and location restrictions, and high rewards are offered to players showcasing good performance, the players are more likely to be determined as not qualifying as "employees."

Conversely, if the team issues detailed directives concerning the activities of the players, strictly designates the time and place of work, provides all necessary equipment, and pays a fixed amount of remuneration to the players regardless of their performance, there is a possibility that they may be deemed "employees."

Thus, the determination of the "employee" status requires a comprehensive consideration of all circumstances, necessitating careful design of contract content.

### **Publicity Rights**

When eSports players gain individual notoriety, situations can arise where economic value is derived through the utilization of their photographs, names, or through merchandise creation.

Consequently, in Japan, eSports players usually possess publicity rights. These rights prohibit unauthorized photography of their appearance, or unpermitted usage of their likeness or name.

While publicity rights are inherently possessed by the eSports players, managing these rights individually can be challenging. Therefore, it is common for the team to handle the management and upkeep of these rights on behalf of the players. In situations where a third party infringes upon the team's player's publicity rights, it is crucial for the team to respond swiftly, issuing warnings and initiating legal action. Since the team is exercising the player's publicity rights comprehensively, it is vital to address any infringements vigilantly and advocate for proper exercise of these rights. It is advisable to explicitly articulate this responsibility within the player contract.

### **Player's Transfer to Another Team**

In Japan's professional sports industry, teams often require consent or payment of a transfer fee for player transfers. This is to protect the team's significant investment of time and resources in recruiting and developing a player. Therefore, placing transfer restrictions is considered acceptable in Japan. Similarly, eSports player contracts may include clauses regarding transfer restrictions. However, excessively restricting player transfers could lead to legal complications under Japanese law, as outlined below.

#### **(1) Constitutional and Civil Code Implications**

The Japanese Constitution stipulates, "Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare." (Article 22, Paragraph 1.) A total prohibition on a player's ability to join another team post-departure could potentially infringe upon the constitutional right to occupational freedom.

Further, the Japanese Civil Code stipulates, "An act contrary to public order or good morals is void." (Article 90.) If a team imposes a non-compete obligation that excessively limits player transfers, and if it surpasses reasonable bounds considering the legitimacy of its purpose, the player's position, the extent of the non-compete clause, and the existence or absence of compensation, it may be deemed invalid for violating public order and morals.

#### **(2) Implications under Competition Law**

The restriction of player transfers between teams or participation in tournaments organized by other entities could potentially contravene the Anti-Monopoly Act of Japan.

In the context of professional sports in Japan, the Japan Fair Trade Commission, in a document titled

“Considerations under the Anti-Monopoly Act on Transfer Restriction Rules in the Sports Business Field” dated June 17, 2019, suggested that excessively restricting player transfers could violate the Anti-Monopoly Act.

Specifically, this document states that in order to restrict transfers, (i) there must be rationality in the purpose intended to be achieved by the transfer restriction, and (ii) there must be appropriateness in the means to achieve it. Consequently, even when a team places transfer restrictions on players, it is critical to agree on and document the conditions of transfer, such as pre-determined transfer fees and payment terms. Furthermore, in Japan, if a team imposes unreasonable restrictions on transfers, it could face severe reputational risks within the eSports industry, potentially leading to a decline in new player enrollments and the number of fans. Therefore, caution is advised not only from a legal standpoint but also with regard to reputational risk.

#### **Rights Pertaining to a Player’s Game Account**

In certain games, where characters evolve with gameplay, the game account itself may accumulate significant value. Consequently, a critical concern for players is whether they can continue using their accounts after their departure from the team.

In the context of Japanese law, the legal status of account usage is typically viewed as a usage right anchored in the licensing agreement from the game operator. Ordinarily, the account license is granted to the individual user (the player), and given that game’s terms of service often prohibit account transfers, the usage right normally belongs to the player.

Consequently, in the player contract, it is prudent to define conditions pertaining to the account’s usage post-contract termination. This may include stipulations on whether the player is allowed to continue using the account, and if so, the terms of compensation for such continued usage.

#### **Considerations when Contracting with Minor Players**

Esports, with its universal appeal across all ages and genders, boasts a broad age range among its players. In Japan, an upward trend is anticipated in the number of professional players who are minors.

Under the Japanese Civil Code, a minor must procure the consent of their legal representative, typically their parent, to engage in a contract. A contract entered into by a minor without this consent can be rescinded.

Under the Civil Code, a minor cannot rescind the aforementioned contract if they used deceit to portray themselves as an adult. Measures such as age verification at the point of contract signing by having them state they are not a minor are sometimes implemented. However, given the practical difficulties in completely eliminating the risk of contract being rescinded, it is generally preferable to secure the guardian's consent. Of note, Japan's legal adulthood age was previously set at 20, but following a revision of the Civil Code, it was lowered to 18, effective from April 1, 2022.

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