

Translation from German
(Translated by Claudia Blech, Berlin)

Legal Opinion - Summary

“Permissibility under constitutional and local laws of concluding a Host City Contract for hosting the XXIII Winter Olympic Games and XII Winter Paralympic Games in 2018 by and between the State Capital of Munich and the International Olympic Committee (IOC)”

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If the 2018 Winter Olympic Games are awarded to the State Capital of Munich (hereinafter referred to as „the City“), the City will have to sign a Host City Contract provided by the IOC. The Contract loads virtually all financial burdens and risks in connection with the hosting of the Games onto the City. The IOC leaves its own financial contribution to its own discretion. Terms concerning the liability and contractual penalty are completely unilaterally for the benefit of the IOC. The City will assume the liability for third parties’ acts, including but not limited to the Organising Committee (OC), which is still to be established, and the National Olympic Committee (DOSB). Swiss law is declared applicable in the Contract. Furthermore, the Contract contains an arbitration clause (XII. 20) for the Court of Arbitration for Sport (CAS). Under German law, the Contract should be considered to be contrary to public policy pursuant to Art. 138 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) (unilateral spreading of risk and burden, abuse of a monopoly position). Nevertheless, the political decision to show an interest in hosting the Games has been taken. The Legal Opinion reviews the question whether or not it is permissible, especially under municipal law, that the Mayor (Oberbürgermeister) of the State Capital of Munich will sign the Contract on behalf of the City if the Games should be awarded to Munich.

According to the Contract, the City has to assume obligations which are beyond the City’s area of responsibility. An essential part of the Games (snow sports competitions, bobsleigh, luge, and skeleton competitions) are not to take place in Munich but in Garmisch-Partenkirchen or the Administrative District of Berchtesgadener Land. For this reason alone, hosting the Winter Olympic Games on the whole is no local matter of the City of Munich. Apart from this, essential terms of the Contract fall within the legislative and administrative competences of the Federal government (entry, stay, and customs issues, tax exemption of the IOC, invitation of foreign guests of state, etc.) With the conclusion of the Contract, the City would act outside its competences guaranteed under the constitution or assigned by law. The City of Munich has entered into a so-called Multi Party Agreement with the Federal Republic of Germany, the Free State of Bavaria, the Market of Garmisch-Partenkirchen, the Administrative District of Berchtesgadener Land, and the German Olympic Sports Confederation (Deutscher Olympischer Sportbund, DOSB). In this agreement, the parties undertake to fulfil the Host City Contract. Any deficits in the Organising Committee budget (OCOG budget) are

to be borne by the Federal government, the Free State, and the City at one-third each. However, this is not sufficient for the City being allowed to fulfil non-municipal duties. For this, a special provision of Land law, i.e. an amendment of or supplement to the Bavarian municipal code (Bayerische Gemeindeordnung), would have been necessary.

Concluding the Contract, the City will assume considerable financial risks concerning the City's own acts as well as acts performed by third parties (OC, DSOB, Federal government, Free State). Such financial risks, the amount of which is not quantifiable, must not be assumed under municipal budgetary law. In derogation of the Bavarian Financial Regulations (Haushaltsordnung), the Land Parliament, under the so-called Olympic Games Act, has permitted the Land government to assume a non-quantifiable deficit risk. However, an amendment of the municipal budgetary law, which, consequently, would also have been necessary, has been omitted. Apart from the lack of venues for the Games, concluding the Contract is not allowed for budgetary reasons, too.

Due to the assumption of financial obligations of third parties (including but not limited to DSOB, OC), the Contract is subject to approval. As far as is known, a permission for the conclusion of the Contract by the competent Government of Upper Bavaria does not exist. Should the Munich Mayor sign the Contract after the Games have been awarded, if applicable, to Munich without permission granted by the Government of Upper Bavaria he would act as an unauthorised agent. Basically, a permission being granted subsequently would be conceivable, however, it would be unlawful and, in view of the severity and evidence of violations of the Bavarian municipal code, void (as would be the case with a permission being granted in advance). That means that a contract between the IOC and the City of Munich cannot be concluded with legal effect under applicable Bavarian municipal law, even with a permission being granted by the Government of Upper Bavaria. Under municipal law, the Contract would not be binding to the City and would be ineffective for an unforeseeable period of time (curing possible only by an amendment of law by the Bavarian parliament in accordance with the constitution).

Being the competent legal supervision authority, the Government of Upper Bavaria should disapprove of any decisions taken by the Munich city council to approve the conclusion of the Contract. Permissions should not be granted. Due to the political intention of the majority of the Land parliament and the state government to support the application for the Games, the opposite has to be expected. Citizens cannot appeal against unlawful acts or omissions by supervision authorities.

Conclusion: The City of Munich and the supervision authorities of the Free State of Bavaria obviously intend to sign the Host City Contract despite evident violations of the Bavarian municipal code, should the Games be awarded to Munich. Possibly, the legal consequences have been given too little consideration. Necessary permissions would be unlawful and, due to the particular severity and obviousness of the violations of law, void. The Mayor of Munich could not effectively bind the City by his signature. At present, the decisions taken by the required majorities of the Land parliament and on municipal level in support of the application for the 2018 Winter Olympic Games cannot be enforced with legal effect. In order to put the application for the Games on a sound legal basis, the Land parliament would have been required to amend not only its own budgetary law, but also the Bavarian municipal code.