

## Should the IOC Worry about the FIFA Fiasco?

Last month's indictment by US law enforcement officials of former Fédération Internationale de Football Association (FIFA) officials and associated marketing executives continues to dominate the headlines. The US government alleges that the defendants violated US criminal statutes prohibiting bribery, racketeering (RICO), money laundering, and wire fraud through a long-running pattern of making, accepting, or facilitating corrupt payments connected to selecting host countries for FIFA-sponsored tournaments, and the sale of media and marketing rights for those events.<sup>1</sup> Other international sports organizations – and the media and corporate sponsors who court them – should be concerned about where the authorities will look next.

At least two reasons justify that concern. First, the decision to pursue RICO charges, and the facts alleged in support of those charges, suggest that the US government intends to reach beyond the scope of each individual illicit act itself. RICO empowers the government to charge as a conspiracy illicit acts that further the conduct of an enterprise (here, FIFA), regardless of the illicit acts' connection to other alleged illegal activity in the charged conspiracy. If the government succeeds with that theory, companies and individuals on the periphery of FIFA's activity could be drawn into the broader allegation of conspiracy.

Second, beyond the indictment, commentators worldwide have speculated about alleged corruption in connection with FIFA's award of the 2018 and 2022 World Cup tournaments to Russia and Qatar, and in connection with the sale of broadcasting and sponsorship rights for those and other FIFA-sponsored events.<sup>2</sup> US authorities might already be investigating those activities. The RICO theory could wrap any allegations of illicit activity related to these events into the overall conspiracy alleged in the indictment, or form the germ of one or more separate indictments.

In short, last month's indictment might be the tip of the iceberg.<sup>3</sup> Who should be concerned, and what steps might they take to avoid or staunch possible legal exposure? A brief look at the characteristics that put FIFA at a heightened risk of corruption gives us insight into these questions.

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<sup>1</sup> Indictment, *United States v. Webb*, No. 15 Cr. 0252 (E.D.N.Y. May 20, 2015).

<sup>2</sup> Michael E. Miller and Brian Murphy, *FIFA: No plans to revisit World Cup votes in wake of corruption probes*, WASH. POST, May 27, 2015, [http://www.washingtonpost.com/sports/fifa-no-plans-to-revisit-world-cup-votes-in-wake-of-corruption-probes/2015/05/27/132c0eb6-045c-11e5-bc72-f3e16bf50bb6\\_story.html](http://www.washingtonpost.com/sports/fifa-no-plans-to-revisit-world-cup-votes-in-wake-of-corruption-probes/2015/05/27/132c0eb6-045c-11e5-bc72-f3e16bf50bb6_story.html).

<sup>3</sup> Sally Jenkins, *U.S.: Indictments are just the start of FIFA scrutiny*, WASH. POST, May 27, 2015, [http://www.washingtonpost.com/sports/us-indicts-world-soccer-officials-in-alleged-150-million-fifa-bribery-scandal/2015/05/27/4630ccaa-0477-11e5-bc72-f3e16bf50bb6\\_story.html](http://www.washingtonpost.com/sports/us-indicts-world-soccer-officials-in-alleged-150-million-fifa-bribery-scandal/2015/05/27/4630ccaa-0477-11e5-bc72-f3e16bf50bb6_story.html).

## **The Anatomy of FIFA**

The US government's indictment suggests that FIFA operated under a heightened risk of corruption, particularly considering its structure, governance, and operations.

Consider FIFA's structure and governance. FIFA, international football's governing body, is composed of over 200 member organizations, each representing a national football association. The member organizations in turn are organized into continental football confederations and smaller, regional federations. All these organizations are governed by FIFA's Executive Committee, which is selected by the member associations and the regional confederations. A significant number of these organizations hail from regions or countries with elevated corruption-risk profiles.

Next, consider FIFA's operations. FIFA owns the rights to the World Cup tournament, among other international and regional football events. FIFA Executive Committee members select tournament host countries by secret ballots. The economic rewards for being selected as a host country are enormous, and the competition to be selected is fierce. National football associations, not to mention governments, economic development entities, and private enterprise, campaign to win the vote of Executive Committee members. The secret balloting obscures accountability, creating an environment where members can secretly sell their votes in exchange for personal remuneration.

In addition to controlling where the World Cup and other tournaments take place, FIFA, in conjunction with the continental confederations, regional federations, and national football associations, controls related media and sponsorship rights, which are sold in a decentralized fashion. Those rights are sold to sports marketing companies, who in turn sell the rights to broadcasters and corporate sponsors. Thus, FIFA may sell the rights to sponsor the World Cup tournament itself; CONCACAF, the continental confederation representing FIFA members from the North American, Central American, and Caribbean football associations, may sell the rights to the regional Gold Cup tournament; and CBF, the national football association for Brazil, may sell the rights for apparel sponsorship for the Brazilian national team – all through intermediary sports marketing companies. These media and sponsorship rights are a substantial source of revenue for FIFA and its members. FIFA took in over \$2.4 billion for the sale of television rights to the 2014 World Cup in Brazil, \$1.5 billion for the sale of sponsorship rights, and another \$200 million for licensing and hospitality rights.<sup>4</sup> Just as the secret balloting obscures accountability, so does the decentralized sales process potentially permit executives to seek personal payments in exchange for marketing opportunities.

In sum, FIFA's structure, governance, and operations exhibit certain heightened risk characteristics. Individually, those features require a diligent and robust compliance system.

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<sup>4</sup> See FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION, FIFA FINANCIAL REPORT: 2014 (2015), [http://www.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben\\_neutral.pdf](http://www.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben_neutral.pdf).

The combination of those factors in one entity adds several layers of complexity that would challenge even the most robust compliance regime.

### **What Next?**

The US government has given no indication that it is looking at international sports organizations beyond FIFA. Given the nature of the enforcement process though, not to mention the seismic impact of the FIFA indictments, organizations exhibiting a similar corruption-risk profile should take note.

Consider the Olympics. The Olympic Games confer enormous economic rewards on the host country, just like FIFA events. For the 2012 London Olympics alone, the International Olympic Committee (IOC) generated \$8.046 billion in marketing revenue.<sup>5</sup> Like FIFA's World Cup host-country selection process, the National Olympic Committees, which are the members of the International Olympic Committee ("IOC"), select the Olympic Games host country by secret ballot.<sup>6</sup>

Also like FIFA tournaments, the media, marketing, and sponsorship opportunities for the Olympic Games can be worth billions.<sup>7</sup> Olympic sponsorships are handled in a decentralized fashion. The IOC, together with the host country's Organizing Committee, sells broadcast and marketing rights to the Olympic Games, and the IOC studiously controls sponsorship rights to the Olympic Games and the global brand. The sale of marketing rights is not entirely centralized at the IOC, though. Each team's National Olympic Committee may enter into its own independent sponsorship deals for its teams and athletes,<sup>8</sup> and the involvement of third-party marketing firms increases the risk profile, as well.

Given these factors, individuals involved with the Olympic Games would be wise to assess their corruption-risk and determine whether action is required, as discussed below.

### **Areas for Attention**

No enterprise is without corruption risk. But a properly functioning compliance system, tailored to meet the risks particular to the institution and the situation, is critical to managing corruption risk to acceptable levels and proactively positioning the enterprise in the event of an investigation, enforcement action, or prosecution. In the wake of the FIFA indictment,

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<sup>5</sup> INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC MARKETING FACT FILE (2014), [http://www.olympic.org/Documents/IOC\\_Marketing/OLYMPIC\\_MARKETING\\_FACT\\_%20FILE\\_2014.pdf](http://www.olympic.org/Documents/IOC_Marketing/OLYMPIC_MARKETING_FACT_%20FILE_2014.pdf).

<sup>6</sup> International Olympic Committee, *FAQ: How are the host cities for the Olympic Games chosen?*, <http://registration.olympic.org/en/faq/detail/id/18> (last visited June 15, 2015).

<sup>7</sup> See INTERNATIONAL OLYMPIC COMMITTEE, OLYMPIC MARKETING FACT FILE (2014), [http://www.olympic.org/Documents/IOC\\_Marketing/OLYMPIC\\_MARKETING\\_FACT\\_%20FILE\\_2014.pdf](http://www.olympic.org/Documents/IOC_Marketing/OLYMPIC_MARKETING_FACT_%20FILE_2014.pdf).

<sup>8</sup> See INTERNATIONAL OLYMPIC COMMITTEE, IOC MARKETING: MEDIA GUIDE (2012), [http://www.olympic.org/Documents/IOC\\_Marketing/London\\_2012/IOC\\_Marketing\\_Media\\_Guide\\_2012.pdf](http://www.olympic.org/Documents/IOC_Marketing/London_2012/IOC_Marketing_Media_Guide_2012.pdf).

companies and individuals dealing with international athletic organizations should review existing compliance systems to minimize any related corruption risk. An appropriate risk assessment may suggest certain enhancements to existing procedures:

- *Increased due diligence of parties and related partners involved in sports marketing*
- *Additional oversight or authorization requirements for payment mechanisms in heightened risk environments*
- *Strengthening of standard contract language to include affirmative representations and warranties regarding anti-corruption and associated laws, as well as the creation and exercise of additional audit rights*
- *A review of existing agreements and historical relationships with international sports associations*

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