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Avoiding FIFA's Footsteps

The 2016 Summer Olympics and what companies need to know about operating in Brazil during one of the biggest sports events in the world.

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Olympic Games in Rio de Janeiro

Rio de Janeiro, Brazil will host the Summer Olympic Games in 2016 – the first country in South America to do so in the 110-year history of the modern Olympic Games.

The Games will arrive to Brazil against the backdrop of a prior International Olympic Committee ("IOC") scandal and two separate, wide-ranging and ongoing corruption scandals. Domestically, the Petrobras Lava Jato scandal has resulted in the arrests of dozens of executives and political leaders, and caused widespread ripples in Brazil's economy. Internationally, the investigations into the Federation Internationale de Football Association ("FIFA"), most notably by the U.S. government, may have implications for those involved with the 2014 World Cup in Brazil.¹ Collectively, these scandals are instructive to global companies regarding the corruption-related risks of doing business in Brazil and elsewhere. This article addresses the background of the IOC and FIFA scandals, the corruption-related risks associated with the 2016 Summer Olympic Games in Rio, the law enforcement authorities responsible for spearheading investigations into corporate corruption, and practical takeaways for companies facing corruption-related risks.

¹ <http://www.theguardian.com/football/2015/jun/04/fifa-corruption-crisis-fbi-inquiry-now-includes-2014-world-cup-in-brazil>

The IOC Example

The International Olympic Committee ("IOC") is no stranger to corruption. In 1998, allegations emerged that some members of the IOC had accepted bribes in exchange for voting that the 2002 Winter Olympic Games be awarded to Salt Lake City.² In the wake of that scandal, ten members of the IOC were expelled from the organization, and the IOC implemented corrective reforms regarding the bidding process and transparency within the organization.³ In anticipation of the 2016 Summer Olympic Games in Rio de Janeiro, IOC President Thomas Bach reminded IOC delegates about their responsibility to remain transparent and adhere to IOC's values.⁴ President Bach has further announced that the IOC will disclose all IOC financial details, including where the organization's revenue originate and are distributed to; that the IOC will separate its audit and finance functions; and that the IOC will appoint a chief ethics officer.⁵ In explaining these changes, President Bach noted, "Sport does not operate in isolation from the rest of society. We are living in the middle of a modern and diverse society that holds us accountable for what we do."⁶

The FIFA Example

The FIFA scandal erupted on May 27, 2015 after 14 high-level individuals (nine current and former FIFA officials, four sports-marketing executives, and a broadcasting business executive) were indicted in the United States on federal charges of racketeering, bribery, wire fraud, money laundering, obstruction of justice and unlawful procurement of naturalization.⁷ Authorities arrested a number of the indicted FIFA officials in Zurich as they gathered days before the scheduled re-election of the organization's longtime president, Sepp Blatter.⁸ The arrests resulted from a lengthy investigation by U.S. authorities which revealed that since the 1990s, FIFA officials had allegedly received bribes totaling approximately \$150 million in exchange for votes regarding which companies would be allowed to televise games, where the games would be held, and who would run the organization.⁹ Some of the underlying conduct, such as the origination of wire transfers, purportedly occurred in the United States, thereby providing U.S. authorities with the alleged "jurisdictional hook" needed to bring charges.¹⁰ Following the arrests, several other

countries, including Australia¹¹, Colombia¹², Costa Rica¹³ and Switzerland¹⁴ publicly announced their own investigations into FIFA-related corruption.

The investigations have had the practical effect of decimating FIFA's leadership. On June 2, 2015, Blatter announced that he would resign from his position as FIFA's president¹⁵, and called for a special election, later scheduled for February 2016, to select his successor.¹⁶ Soon thereafter, U.S. authorities revealed that its investigation of FIFA-related corruption extended to the award of the 2014 World Cup to Brazil, the 2018 World Cup to Russia, and the 2022 World Cup to Qatar.¹⁷ The investigation relating to the 2014 World Cup in Brazil appears to center on the links between former Brazilian football chief Ricardo Teixeira, and FIFA Secretary General Jerome Valcke.¹⁸ On September 17, 2015, FIFA announced that it had put Valcke on leave, and released him from his duties effective immediately.¹⁹ On October 8, 2015, FIFA's independent Ethics Committee suspended Blatter, Valcke, and Michael Platini, a FIFA vice president from the organization based on ongoing ethics investigations, and amid a Swiss-led investigation into the alleged FIFA-related corruption.²⁰

Who is at Risk?

As an instrument of economic development, global events like the World Cup and the Olympics have far-reaching impacts upon the local host community, while also subjecting the companies involved with the events to certain corruption-related risks.

The following details those business segments that a government investigation is most likely to target.

Corporate Sponsors

The IOC and FIFA are increasingly reliant on corporate sponsorships as a source of revenue. Companies, in turn, have demonstrated their willingness to pay a premium to edge out competitors and earn the title of corporate sponsor, thereby securing a global platform from which they can advertise their brands and products. In 1984, the IOC reduced the number

2 <http://sports.yahoo.com/news/ioc-president-reminds-members-responsibilities-135501630--oly.html>

3 Id.

4 Id.

5 Id.

6 Id.

7 <http://www.washingtonpost.com/news/wonkblog/wp/2015/05/27/meet-the-unscrupulous-executives-who-conspired-with-fifa-officials-to-funnel-150-million-in-bribes/>

8 Id.

9 Id.

10 <http://www.washingtonpost.com/news/the-fix/wp/2015/05/27/how-the-us-can-arrest-fifa-officials-in-switzerland-explained/>

11 <http://www.theguardian.com/football/2015/may/29/fifa-crisis-australian-police-agree-to-look-into-500000-paid-to-jack-warner>

12 <http://colombiareports.com/colombia-joins-investigation-into-fifa-corruption/>

13 <http://thecostaricanews.com/sports/prosecutors-open-investigation-arrest-of-fifa-official-eduardo-li/>

14 <http://www.bbc.com/news/world-europe-32912533>

15 <http://www.nytimes.com/2015/06/03/sports/soccer/sepp-blatter-to-resign-as-fifa-president.html>

16 <http://www.nytimes.com/2015/10/09/sports/soccer/sepp-blatter-michel-platini-jerome-valcke-fifa-suspended.html>

17 <http://www.theguardian.com/football/2015/jun/04/fifa-corruption-crisis-fbi-inquiry-now-includes-2014-world-cup-in-brazil>

18 Id.

19 <http://www.fifa.com/governance/news/y=2015/m=9/news=press-statement-on-jerome-valcke-2678445.html>

20 Id.

of Olympic sponsors to 35. Corporations responded to this change by submitting increasingly high-priced bids in an effort to secure a position as an Olympic sponsor. For example, during the 2012 Olympic Games, some companies paid over \$100 million each for “The Olympic Partners” (“TOP”) sponsorship package. In 2013,²¹ FIFA earned \$404 million from marketing rights associated with the 2014 World Cup – a figure that constituted 29% of its annual revenue.²²

Corporate sponsors have recognized the inherent risk in being associated with corrupt conduct, and the need to distance themselves quickly from that conduct. For instance, in the days following the FIFA arrests, FIFA sponsors made public statements reiterating their commitment to ethical and transparent conduct.²³ On October 2, 2015, some FIFA sponsors went a step further and issued statements calling for FIFA’s embattled president, Sepp Blatter, to resign.²⁴ On October 8, 2015, FIFA suspended Blatter from the presidency.²⁵

Media /Communications

Among the individuals indicted in the FIFA case are four sports marketing executives based in North and South America, and a controlling principal of a broadcasting business accused of serving as an intermediary between FIFA officials and the marketing executives.²⁶ Media and communications at global events such as the World Cup and the Olympics are a big business that carries with it great opportunity and risk for both organizations such as FIFA and the IOC, and the companies providing those services. For example, in May 2014, a global media communications company entered into a \$7.75 billion agreement with the IOC to secure the U.S. broadcast rights to the Olympics through 2032.²⁷ This agreement extended their existing \$4.4 billion bid to secure U.S. broadcast rights through 2020, which they obtained in 2011.²⁸

Construction

Brazil has unfortunately shown the world how vulnerable the construction industry is to corruption as it expands its infrastructure to support events like the Olympics.

Despite the work done to prepare Rio de Janeiro for the World Cup, there is still more infrastructure needed. According to the Rio 2016 website, 13%, or nearly R\$ 1 billion of the total expense budget is dedicated to infrastructure projects.²⁹ The total budget at the time of the bid in 2009 was R\$ 4.9 billion, but it was adjusted in 2013 to R\$ 5.5 billion due to inflation and again in 2015 to R\$ 7.4 billion (over \$ 2.1 billion) due to further inflation. The “inclusion of four new sports since the bid, new technologies, Games security, above-inflation growth in average salaries, and Olympics Village usage expenses and currency exchange rate” also contributed to the adjustment.³⁰

Additionally, this budget may increase again following recent concerns over the water quality at many of the aquatic event sites, although it is yet unclear how this will be addressed. The city’s Olympic bid in 2009 included a promise to clean up 80% of the Guanabara Bay, the site for the sailing and windsurfing events. These efforts remain at less than 50% of their goal, with officials stating that they will not make it by the time the Olympic torch is lit.³¹

Many of the Olympic sites are also being built through Private-Public Partnerships (PPPs), which decrease the overall cost for the city. Once the Games are over, the private companies will be able to re-develop the sites for profit. Thus, like anywhere in the world, PPP projects in Brazil are riddled with issues and growing pains, including financial considerations, guarantees of sufficient legal framework and mechanisms, appropriate public regulation and interaction, and social liability.

Construction related to the Games itself, including sport-specific competition and spectator areas and the Olympic Village, is not the only construction that continues to take place in Rio in preparation for the event. Developing and upgrading the transportation infrastructure across the city and ensuring sufficient general accommodation facilities to absorb the influx of competitors and spectators to the city are also considerable concerns. In this context, innumerable players, both public and private, hold an interest.

21 <http://www.cbc.ca/news/business/the-ever-increasing-cost-of-being-an-olympic-sponsor-1.2527993>

22 Id.

23 <http://www.afr.com/business/sport/world-cup-sponsors-putting-pressure-on-fifa-to-resolve-scandal-20150527-ghb99f>

24 <http://mobile.nytimes.com/2015/10/03/sports/soccer/sepp-blatter-coca-cola-mcdonalds-fifa-resign.html>

25 <http://www.nytimes.com/2015/10/09/sports/soccer/sepp-blatter-michel-platini-jerome-valcke-fifa-suspended.html>

26 <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>

27 <http://www.olympic.org/news/ioc-awards-olympic-games-broadcast-rights-to-nbcuniversal-through-to-2032/230995>

28 http://articles.philly.com/2014-05-09/news/49720032_1_pyeongchang-u-s-olympics-winter-olympics

29 <http://www.rio2016.com/en/transparency/budget>

30 <http://www.rio2016.com/en/transparency/budget>

31 <http://time.com/3768709/rio-de-janeiro-2016-olympics/>

A New Level of Scrutiny

The Legal Context

Recently, Brazil has been the center of numerous corruption scandals being investigated by Brazilian law enforcement and by the United States Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC"). In the wake of the Petrobras Lava Jato scandal and the FIFA scandal, regulatory authorities worldwide are increasingly focused on investigating and bringing charges against alleged corporate and individual wrongdoers.

The Players

Brazil

Brazil has made fighting corruption a serious national priority. Spearheaded by the Brazilian Ministério Público (Public Prosecution Service), an independent prosecutorial authority, several notable prosecutions spotlight Brazil's crackdown on large-scale corporate crime and corruption. In addition to the above-noted Petrobras investigation, Brazil's Federal Police opened an investigation of more than 70 companies, 15 law firms, and 24 individuals for their potential involvement in suspected tax evasion as part of "Operação Zelotes" (Operation Zealot). Several years ago in 2012, more than 25 people, including citizens, politicians, and current and former government officials were convicted in a bribery and money laundering scandal referred to as "Mensalão" (the big monthly payment). A focus on anti-corruption in Brazil thus has grown into a serious national priority.

Brazil demonstrated its serious commitment to tackling corporate corruption when, on March 18, 2015, Brazilian President Dilma Rousseff signed a decree regulating the Clean Company Act (Law No. 12,846 "the CCA"), which, among other areas, prohibits promising, offering, or providing, directly or indirectly, an improper benefit to a public official or to a third party related to a public official. It enforces strict liability against corporate entities for such acts, regardless of the company's knowledge or intent concerning the bribery. Moreover, there are no exceptions made for "facilitation" or "grease" payments made in good faith. The CCA applies to all legal entities with operations in Brazil, including successor entities, and jurisdiction may extend abroad. The CCA allows for significant leniency if a company cooperates with investigators, discloses violations, and enters into resolutions with the government regarding the company's conduct. If these conditions are met, fines can be reduced by up to two-thirds of the total fine, and a company may be exempted from a number of sanctions.

United States

The DOJ is well known for its long-standing history of fighting bribery and corruption. In 1970, the U.S. passed the Racketeer Influenced and Corrupt Organizations Act, commonly referred to as "RICO," which holds individuals responsible for their involvement in ongoing criminal organizations. Under RICO, an individual is responsible for acts committed by other members of the organization of which they are a member, even if they did not personally participate in those acts. In 1977, the U.S. also enacted the U.S. Foreign Corrupt Practices Act ("FCPA") in response to widespread corporate corruption. Enforced by both the DOJ and the SEC, the law has become a model for anti-corruption efforts worldwide and takes a two-fold approach. First, it directly prohibits acts of bribery involving foreign officials that are intended to secure business advantages. Second, it requires companies to make and keep accurate books and records in order to enhance their ability to maintain adequate accounting controls. The robust law is a key tool in the DOJ's arsenal to capture both overt bribery and instances of corruption that might otherwise be concealed through falsified financial records. Importantly, the FCPA's provisions can apply to conduct both inside and outside the U.S. In response to aggressive enforcement of the FCPA, many multinational corporations have focused on training and prevention of bribery and corruption through preventive compliance efforts.

The DOJ has a history of incentivizing corporations to cooperate with its investigations. Most recently, the DOJ updated its policies to address public criticism and perception that it had failed to prosecute individual corporate executives in the wake of the most recent U.S. financial crisis. On September 9, 2015, the DOJ, through Deputy Attorney General Sally Yates, issued a new set of policies pertaining to investigations and prosecutions of corporate wrongdoing. The memorandum, commonly referred to as "the Yates Memorandum," included a directive that the DOJ not provide a company with cooperation credit unless it identifies all employees responsible for the wrongdoing at issue.

United Kingdom

The U.K. is also no stranger to anti-corruption, having built a reputation for having one of the world's harshest anti-corruption laws, the U.K. Anti-Bribery Act, enacted in 2011. Enforced by Britain's Serious Fraud Office ("SFO"), the law is a significant update to the longstanding Prevention of Corruption Act (1906), which was used last year to convict printing firm Smith & Ouzman, along with two of its former employees, of making payments to public officials to secure business contracts in Kenya and Mauritania.

Thus, although the FIFA scandal itself did not implicate certain anti-corruption regulatory schemes (such as the FCPA or U.K. Anti-Bribery Act), corporations linked to the Olympic Games

in Brazil must understand key national and international anti-corruption laws to ensure they are taking affirmative compliance steps to prevent bribery and corruption.

Switzerland

While not an exhaustive list, the above countries are key potential regulators in instances of global corruption. Switzerland, however, has also turned its focus to corruption in sports, having recently launched a criminal investigation into the activities of recently-suspended FIFA president Blatter. On September 25, 2015, Blatter was interrogated by officials from the Swiss attorney general's office. The officials also reportedly have searched his office. The nature of the investigation, according to Swiss officials, centers upon allegations that Mr. Blatter breached his fiduciary duties to FIFA through criminal mismanagement and misappropriation of funds. Swiss authorities are pursuing this investigation in cooperation with the DOJ. Of note, the media contract at issue here amounted to a relatively modest \$600,000, demonstrating that entities with varying levels of financial interest face certain risks in the sports event environment.

What is at Stake?

What can companies stand to lose if they become embroiled in shady dealings?

Legal Ramifications

Under each of the above regulatory regimes, penalties for corporations that engage in bribery and corruption are costly. Under Brazil's Clean Company Act, the penalties can be up to 20% of the company's annual gross revenues, or if the revenues cannot be determined, it can range between R\$6,000 and R\$60 million (approx. \$2,500 - \$25 million), and may not be lower than the benefit obtained by the company related to the activity.³² Under RICO, individuals face up to 20 years imprisonment for a single RICO charge, and this can rise to a life sentence if any of the predicate acts charged would permit such a punishment.³³ Fines under RICO are \$250,000 or twice the proceeds of the offense. In addition, RICO contains substantial forfeiture provisions. Likewise, FCPA violations can range up to \$2 million per violation, or twice the amount of the pecuniary gain sought in the transaction for bribery violations, and up to \$25 million for accounting violations. For individuals convicted under the FCPA, they are also subject to penalties up to \$100,000 per violation as well as a potential prison sentence; for accounting violations, individuals may face up to \$5 million in fines and a maximum term of imprisonment of 20 years per

offense. Finally, the U.K. Bribery Act in some cases permits an unlimited fine and imprisonment up to 10 years. Companies and individuals convicted under these statutes can face debarment from government work, and individuals can be barred from serving as officers or directors of a public company.

Investor Risk

Corruption is expensive. It is expensive when it is occurring, and it is expensive when it is discovered. And in either scenario, it is not an expense that can be predicted or pre-calculated by investors looking to place their money wisely. Investors typically do not adhere to the US legal principle of "innocent until proven guilty," particularly in regard to their money. The responses from stakeholders following the announcement of a corruption investigation vary, ranging from demands for greater transparency and reparative actions, to the cutting of ties and investment flight and even to litigation to recoup alleged losses. Additionally, for stakeholders choosing to stick by their company, the costs associated with the investigation – potential fines, legal fees, other professional fees, compliance program development and implementation – can weigh heavily on the company's bottom line, and consequently the investor's returns. For example, since 2008, Siemens has spent approximately \$3 billion on fines and internal investigations.³⁴

Furthermore, such investor risk does not exist in a vacuum, and can even extend beyond the company or companies implicated. Countries with high indices of corruption and fraud often are seen as risky and uncertain environments for investors. This partially explains why many governments around the world invest in their legal programs and infrastructure: to reduce their perceived risk and attract the foreign investment they hope will bolster economic growth and opportunities. Therefore, a corruption scandal is not only deleterious for the entities involved, but also for companies throughout the region, regardless of industry or sector. For example, following the announcement that Sepp Blatter had stepped down as president of FIFA, stocks on the Qatar Stock Index immediately dropped \$4.5 billion. This is because Qatar's winning bid for the 2022 World Cup was also under scrutiny, and investors banking on the influx of economic opportunities saw their investments at risk.³⁵

Scandals related to such activities invariably beg the question: "If this is happening there, what else... who else?"

32 <http://www.acc.com/legalresources/quickcounsel/cnbalfuba.cfm>

33 <http://law.jrank.org/pages/1962/RICO-Racketeer-Influenced-Corrupt-Organizations-Act-Penalties.html>

34 <http://www.economist.com/news/leaders/21650547-hard-line-commercial-bribery-right-system-becoming-ridiculous-daft-graft>

35 <http://www.independent.co.uk/news/business/news/sepp-blatter-quits-qatar-stocks-take-45-billion-hit-10294052.html>

Reputational Damage

Whether witting or unwitting participants in the allegedly illegal activity, both the organization involved as well as high-level executives risk significant damage to their credibility and reputation once a scandal breaks.

Organizations might have the ability to weather the storm of a high-profile scandal, often due to an overhaul in leadership or the implementation of updated and comprehensive compliance programs. Additional safety net measures might stem from the virtue of being a brand so well-recognized that partners are willing to risk maintaining their business relationship in order to continue reaping the rewards once the scandal has died down. Some organizations even emerge stronger from the ashes of a corruption scandal, having undertaken correctional measures that demonstrate to the authorities and business world a sincere dedication to transparency and ethical standards. Nevertheless, once a business has had its name linked to corruption, bribery, money-laundering, or sanctions, its potential future partners may well pause before pursuing a relationship that might put their own businesses at risk.

Individuals, by contrast, stand to risk far more. It is the individuals in any organization that comprise its decision-making structure, and it is people who act within that business framework. In addition to losing their positions within that organization, individuals who engage in wrongdoing can face years of imprisonment, substantial fines and sanctions, life bans from involvement in certain activities, and significant barriers in pursuing other positions within the business community.

For example, following the Salt Lake City Olympic scandal, the IOC executive board approved a recommendation by internal investigators to expel six of the IOC members involved in accepting bribes in the 2002 Winter Olympics.³⁶ Additionally, upon his identification as an unindicted co-conspirator by the DOJ in the FIFA scandal, Enrique Sanz was fired from his position as secretary general of CONCACAF (Confederation of North, Central American and Caribbean Association Football); he had previously been placed on "indefinite leave" by the organization, as well as suspended from all football-related activities by FIFA.³⁷

How to Avoid the Pitfalls

How and what steps can companies take to minimize corruption-related risks?

Companies can take certain steps to minimize the corruption-related risks associated with operating in Brazil and elsewhere. Most critical is a company's development, implementation and maintenance of an effective compliance program. A compliance program tailored to the company's risks and business profile is an important consideration to ensure adherence to anti-corruption laws worldwide. In some cases, the existence of such a program can reduce financial penalties if the company reaches a settlement agreement with enforcement authorities. The hallmarks of an effective compliance program include a clearly articulated policy against corruption; a code of conduct with compliance policies and procedures; oversight, autonomy, and resources; risk assessment; training and continuing advice; incentives and disciplinary measures; third-party due diligence and payments; confidential reporting; continuous improvement; and periodic testing and review. •

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³⁶ <http://www.washingtonpost.com/archive/sports/1999/03/16/ioc-panel-approves-sanctions/5290a7a6-8d54-4206-9120-5814c7e25009/>

³⁷ <http://www.aljazeera.com/news/2015/08/concacaf-head-sacked-fifa-corruption-probe-150807140455913.html>

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