

FIFA - the US indictment A new game for international associations!

By Howard S. Fisher, Esq., Beverly Hills, California,
Alexander J. Fisher, Esq., Beverly Hills, California,
Geoffrey Morson, Esq., Cambridge, England

Introduction

What restraints are there on the power of the United States (or other countries) to impose their criminal laws around the world? As a US Congressional report concluded:

"The Constitution grants Congress broad powers to enact laws of extraterritorial scope and imposes few limitations on the exercise of that power."

The Federation Internationale de Football Association (FIFA - aka International Federation of Association Football), is the most influential sporting organisation on the planet. On 27 May, the United States unsealed indictments against 14 FIFA officials and marketing associates that included charges of: wire transfer fraud, money laundering, tax evasion and offences arising from The Racketeer Influenced and Corrupt Organisations Act (RICO) for bribes and kickbacks surrounding the rights to host or sponsor key soccer events. These indictments outlined payments totalling more than USD 150 million spanning a 24-year period. The indictments included seven senior FIFA members - including two vice-presidents, and several sports marketing executives. These officials were arrested at 6am in Zurich, at the luxury Baur au Lac Hotel, just a few days before a major meeting was held to elect a new FIFA president.

Two days after the US indictment, on 29 May 2015 Sepp Blatter was re-elected for a 5th term as President of FIFA. Some claimed the US indictment was pay-back for FIFA's failing to award the US the World Cup in 2022, and that in reality the indictments held no basis. Yet, four days after the election, Mr Blatter resigned effective upon the election of his replacement which is scheduled for 26 February 2016. One wonders what information became known by Mr Blatter subsequent to his election that he was so willing to submit his resignation.

Four individuals and two companies have already pleaded guilty to various crimes, and have agreed to forfeit substantial assets. Moreover, at least one of the indicted FIFA officials is claiming that he will release an avalanche of secrets concerning further FIFA wrongdoings.

This article will explore the US right to be the world's policeman. As we have discussed in numerous articles in *Offshore Investment* there is both civil and criminal liability for offshore attorneys, banks and trust companies for violation of US laws for actions that are solely outside of the US.² The US has imposed its tax, securities and banking regulations on a global basis. There have been numerous successful prosecutions under the Foreign Corrupt Practices Act, for activities wholly conducted outside the US. The same is likely to be true for the US International Traffic in Arms Regulations, the Sarbanes-Oxley act, and US patents.³

The basis for some of the FIFA indictments goes back in time more than a decade. There is nothing novel in the tools being used by the Justice Department to impose its laws on FIFA, a Swiss organisation - or potentially on any other international organisation. What is unique to this matter however, is the willingness of the US to apply its laws to an international organisation. The US actions may portend other international enforcement actions, where the conduct is viewed as being egregious, and there is little ability or appetite for other nations to bring the matter to justice. For example, just prior to the G-7 meeting in June 2015, British Prime Minister David Cameron said the FIFA scandal should encourage the international community to target the "cancer" of corruption around the globe. Much like the G-7 and Organisation for Economic Co-operation and Development's attack on financial stability and offshore financial centres which ultimately had a global impact, so too may the actions of the

US be the genesis of a new era of anti-corruption enforcement.

FIFA, and other international organisations, are subject to the rules and regulations of virtually all of the jurisdictions in which they operate. If anyone doubts the ability of the US to reach out internationally and apply its criminal laws, one needs look no further than the recent history of Swiss banks paying more than a USD3 billion in penalties to the US.

Now FIFA and its senior officials are under further investigations by nine countries. We are experiencing the dawn of an era where international corruption will not be tolerated, and the global community appears willing to tackle the issues.

In mid-July Jeffrey Webb, from Cayman, a former FIFA vice-president, and president of the regional soccer federation for North and Central America and the Caribbean (CONCACAF), who was one of seven FIFA executives arrested in Zurich in May, had voluntarily agreed to extradition to the US, and worked out a deal: USD10 million bail, house arrest, and surrender his passports. He has also been charged with healthcare fraud in his native Cayman Islands. Cayman authorities have issued an arrest warrant for Webb and are expected to seek his extradition.

What is FIFA

FIFA is a Swiss association, which is the governing body of soccer. It was founded in 1904. It is based in an up-scale Zurich neighbourhood, in a USD200 million headquarters, with a staff of 400 people. FIFA is comprised of member countries, as well as six regional soccer federations.

Although FIFA is technically a non-profit association, it is effectively a monopoly, which has been allowed to amass a fortune (it has more money than the Olympics), and to extract extraordinary conditions upon countries where important matches are staged. For example, it required South Africa, as a condition of hosting the 2010 World Cup, to enact legislation that provided a tax-free bubble around FIFA-designated sites so that profits on merchandise and tickets would not be subject to income or VAT taxes. Further, FIFA mandated special benefits for its officials (eg parking, VIP areas, special venues, etc.).

FIFA's principal source of revenue is generated by the major tournaments that it sponsors, such as the World Cup, which is the most lucrative sporting event in the world, eclipsing the Olympics by a significant margin.

The US claims

After a three-year investigation that involved the FBI, the Internal Revenue Service (IRS) Criminal Division, and other US agencies, the US Attorney General personally announced the indictments, and multiple concurrent guilty pleas. The indictment is 160+ pages, and details a dozen specific schemes, including specifics of sums paid, and the banks that handled the transactions.

email, fax, making a call or using the internet to make a contact, with the potential to be a crime in a foreign country, can be punishable in the US!

The US extending the reach of its criminal laws

What right does the US have to apply its laws outside of its borders? International law has long recognised that a country may enforce its laws with respect to actions that take place outside of its borders, if the actions have an effect within its borders. Many countries, including the US and the UK have used their anti-terrorism laws enacted in the post-9/11 era to prosecute persons who act completely outside of, and have no connection with the country of prosecution.

The US offshore application of its laws is not unlimited. For example, the Securities and Exchange Commission (SEC) routinely conducts offshore investigations, however it can only serve a subpoena in the US. In some instances, US law has authorised certain agencies such as the IRS and the Federal Trade Commission to compel offshore persons to respond to US enquiries.⁷ However, if a subpoena is served in the US (eg, through a subsidiary on a foreign entity), a foreign entity may have to respond to the subpoena,⁸ and the US can gain jurisdiction through a branch or subsidiary in the US for a subpoena directed at its parent.⁹ US courts have compelled a Swiss company to produce records even though it might violate Swiss criminal law.¹⁰

Generally an arrest warrant can only be served in the US. But, the US can seek extradition based upon a treaty - then the party to the treaty can detain the persons, for extradition. The warrants served in Zurich on FIFA officials and marketing affiliates were aimed at detaining the individuals and affiliates for extradition to the US, under the US-Swiss treaty (see discussion below).

Sometimes there are conflicts between US and foreign courts. For example, in *Vanguard Int'l Mfg.*¹¹ the Hong Kong (HK) courts issued an order prohibiting all third party record-keepers from complying with a US tax investigation. The US court held that the vital interest of the US in enforcement of its laws prevailed over HK's interest in maintaining the confidentiality of banking records - to the extent that any of the HK companies involved had assets or subsidiaries in the US, the court had a method of enforcing its ruling. In the absence of such in rem jurisdiction, the US court would be powerless to enforce its decision.

Although the US has substantial resources to apply extra-territorial jurisdiction of its court and law, in the FIFA case, prosecutors chose not to invoke extraterritorial jurisdiction. Instead they

relied on the defendants use of American banks and American locations to conduct meetings as the basis for charging them in federal court.¹²

There are numerous bases for the US asserting jurisdiction over FIFA:

- Multiple acts of bribery in New York, payments made through or cleared by US banks, assets purchased in the US with proceeds from the crimes,¹¹ use of interstate wires (eg, USD 13 million in money transfers from a Miami bank to an account in Paraguay), conspiracy, obstruction of justice and travel through or to the US. Moreover, an additional asserted basis for jurisdiction goes something like this: It has now become common for soccer games played outside the US to be watched in the US, thus bribes taking place on foreign soil have resulted in an impact in the US.
- Some of the banks mentioned in the indictment whose US offices were involved in specific wire transfers include: Banco do Brasil (New York), Bank of America (New York), Citibank (Florida), Charter Bank (New York), Delta National Bank & Trust (Miami), HSBC (New York), JP Morgan Chase (New York) and Wells Fargo (New York). The fact that there were eight US based banks or branches used by the defendants forms a strong basis for applying US law to the transactions.
- A few of the defendants were US citizens or corporations, so there is no issue of asserting jurisdiction over them, no matter where in the world their actions occurred.

An instructive example of the US reach is the famous *NatWest-3* case. They were British citizens, whose actions took place in England, while working for a company based in London, with regard to a Cayman subsidiary of Enron, a US company. The US having been embarrassed by not foreseeing the problems with Enron was looking to prosecute anyone, anywhere who was responsible for the plight of Enron's shareholders. The British bankers were indicted in Texas on seven counts of wire fraud in 2002, were extradited by the UK to the US, where they ultimately pleaded guilty to one count of wire fraud - were sentenced to 37 months in prison and were ordered to make USD7.3 million in restitution.

A closer look at some of the key statutes

Some of the key statutes that Justice based the FIFA indictments on include wire fraud, RICO and conspiracy, which are described below.

The wire fraud statute, which is the cornerstone of the Pasquantino case and the FIFA indictments, provides in part:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of

false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, ... in interstate or foreign commerce, any writings, ... for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."¹⁴ Scheme or artifice is defined in part as: "For the purposes of this chapter, the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services."¹⁵

The broad definition of a scheme or artifice which seems to encompass most forms of bribery, especially bribery involving public officials, is the standard which may be applied. Moreover, this standard is not limited in a geographical sense. Hence, the wire fraud statute is a perfect tool to apply to bribery or corruption of any international organisation, where the payments have some nexus to the US. The following is an excerpt from Mr Blazer's testimony at his plea in 2013 - it is a perfect roadmap of the elements of wire fraud, and lays out the basis for US jurisdiction:

Between April of 2004 and May 2011, I and others who were fiduciaries to both FIFA and CONCACAF, in contravention of our duties, I and others, while acting in our official capacities, agreed to participate in a scheme to defraud FIFA and CONCACAF of the right to honest services by taking undisclosed bribes. I and others agreed to use email, telephone, and a wire transfer into and out of the United States in furtherance of the scheme. Funds procured through these improper payments passed through JFK Airport in the form of a check.

US prosecutors often use the Racketeer Influenced and Corrupt Organisations Act as the basis for international prosecutions. Under RICO there needs to be a predicate act - which is often the honest services statute combined with mail or wire fraud. RICO requires an enterprise and a pattern which is a mere two mailings or wire transmissions. The FIFA indictment goes to great length to spell out the criminal enterprise and the conspiracy amongst those indicted. Hence, RICO, or conspiracy to aid a RICO violation is another powerful tool to address international corruption.

Impeding due administration of justice and/or tax laws can be the basis for the US to seek jurisdiction as to acts outside of the US that have an effect in the US.¹⁴

The US has successfully prosecuted individuals based outside the US for their conspiring to violate US laws - including tax, securities or any other criminal law.¹⁷ This is often referred to as a Klein Conspiracy,¹⁸ two people acting jointly, even if what they are doing is legal, that has the effect of impairing or impeding the IRS, eg assessing, computing or collection of tax. Often this is used when the deceit,

Those indicted generally fall into three categories: (A) soccer officials acting in a fiduciary capacity within FIFA and/or one or more of its constituent organisations; (B) sports media and marketing company executives; and (C) businessmen, bankers and other trusted intermediaries who laundered illicit payments.

The principal basis for the indictments seems to stem from wire fraud (see discussion about Pasquantino, below). An often repeated phrase in the indictment is that the acts of the defendant deprive FIFA and its constituent organisations of their rights to honest and faithful services. Followed by a claim that the funds were wired from or through the US.

Four individuals and two companies have already pleaded guilty to various crimes, including wire fraud, structuring, income tax evasion, failure to file FBARS, etc. They have collectively agreed to the forfeiture of assets worth more than USD154 million, which will be held in part to satisfy restitution orders. Sentencing will be set at a later date, based in part upon the co-operation of the defendants.

One of the defendants who pleaded guilty is Charles Blazer, a US citizen. He was formerly the general secretary of CONCACAF, and formerly a member of the FIFA executive committee. As part of his arrangement with the US Attorney, he wore a wire and met with his former colleagues and obtained allegedly incriminating statements from his colleagues. At his plea hearing in 2013, he testified:

"Beginning in or about 1993 and continuing through the early 2000s, I and others agreed to accept bribes and kickbacks in conjunction with the broadcast and other rights to the 1996, 1998, 2000, 2002, and 2003 Gold Cups. Beginning in or around 2004 and continuing through 2011, I and others on the FIFA executive committee agreed to accept bribes in conjunction with the selection of South Africa as the host nation for the 2010 World Cup."

What Blazer was describing was fleshed out further by the indictment, and by subsequent news stories, is a convoluted tale of corruption and cover up: South Africa had made a substantial payment to FIFA prior to its being awarded the World Cup in 2010, and requested that USD10 million of its payment be forwarded to the regional association for Caribbean soccer (CONCACAF) to be used for the African Diaspora project - three transfers were made in 2008. There is no real definition of the Diaspora project or its goals. At FIFA, the funds were ordered to be transferred to CONCACAF by a now deceased FIFA executive. At that point, there was no oversight or plan in place for how the funds would be used for the project. That alone should have caused alarm bells to go off at FIFA and CONCACAF. The indictment alleges that USD4.8 million was paid to a

Caribbean based supermarket chain (that in turn paid part of it back to a regional FIFA official), USD750,000 was used to pay further bribes to Mr Blazer (another FIFA official), and USD1.6 million went to personal loans and credit card expenses of a FIFA official. Not a single penny of disbursement for the Diaspora project has been described in the indictment, by the official/regional organisation or by FIFA.

Of course, President Putin denies any wrongdoing with Russia's bid for the World Cup, and thinks Blatter should be awarded the Nobel Prize.

Be careful who you disrespect, they may have powerful friends

As a result of allegations of bribery in the awarding of the World Cup to Russia in 2018, and to Qatar in 2022, FIFA President Blatter established a new Independent Governance Committee, which had a new two-chamber ethics committee - with an investigative arm led by a prosecutor, and a judicial arm led by a judge - as well as a new Audit and Compliance Committee.

FIFA hired Michael J. Garcia as the ethics prosecutor in July 2012. He is the former US attorney of the Southern District of New York. He was in charge of the federal investigation against former New York governor Eliot Spitzer. After an extensive investigation, Mr Garcia completed a 400+ page report into allegations of corruption at FIFA. FIFA refused to release the actual report, and instead released a 42-page document of summary findings, which some have called a white-wash summary. Mr Garcia denounced the summary as "materially incomplete" with "erroneous representations of the facts and conclusions." FIFA's internal appeals committee dismissed Garcia's claim that the summary was a white-wash. Garcia resigned a day later.

FIFA's Audit Committee, in deciding not to publish the full report, stated that it was clear that: "the irregularities determined thus far are not of an extent that would lead to the bidding process as a whole being qualified as significantly illegal."

Demosthenes with a mouth full of pebbles could not have said it better. This type of opaque statement is an example of the brazen attitude of some of the officers at FIFA.

Mr Garcia's predecessor as US Attorney for the Southern District of New York is James Comey, who is now the current director of the FBI.

Loretta E. Lynch, the former US Attorney for the Eastern District of New York was in charge of supervising the FIFA investigation from its earliest stages - she too was a colleague of Mr Garcia. Ms Lynch is now the US Attorney General.⁴

Clearly the US investigation was independent of Mr Garcia, who would not have shared any of his investigation with US

authorities. However, he may well be called to testify in a grand jury proceeding regarding the FIFA investigation.⁵

Culture of corruption - allegations of corruption are nothing new

For years, claims have been made that FIFA has operated with an unabashed culture of corruption from the referees on the field, to the most senior executives. Yet like most multinational organisations, FIFA officials believed that they were untouchable - they were subject only to self-regulations.

Mel Brennan (Head of Special Projects for CONCACAF from 2001 to 2003, a liaison to the e-FIFA project, and a 2002 FIFA World Cup delegate), became the first high-level FIFA insider to go public with substantial allegations of greed, corruption, non-feasance and malfeasance by CONCACAF and FIFA leadership.

In 2006 British investigative reporter Andrew Jennings' book *Foul! The Secret World of FIFA: Bribes, Vote-Rigging and Ticket Scandals* (Harper Collins) was published detailing an alleged international pay to play scandal following the collapse of ISL, a FIFA marketing partner.

In June 2006, BBC news aired an exposé, that claimed a senior FIFA official was being investigated by Swiss police over his role in a secret deal to repay more than USD1.6 million worth of bribes pocketed by football officials.

In 2014 Lord Triesman, the former chairman of the English Football Association, described FIFA as an organisation that "behaves like a mafia family," highlighting the association's "decades-long traditions of bribes, bungs and corruption."

Another documentary broadcast on BBC in November 2010, alleged that several senior FIFA officials had been paid USD100 million in bribes by a FIFA marketing partner between 1989 and 1999, which FIFA had failed to investigate.

The Pasquantino case - the basis for part of the US claims

Mr Pasquantino, a New Yorker, wanted to make a profit by purchasing liquor in the US and reselling it in Canada. The Canadian tax was almost double what Pasquantino paid for the liquor, so the potential profit from the transaction was substantial due to the tax arbitrage. He faxed his liquor order to a Maryland distributor, and had the liquor transported to Canada. He was convicted in the US of wire fraud relating to Canadian tax by using his US fax. In 2005 the conviction was upheld by the US Supreme Court.⁶

The Pasquantino case stands for the proposition that if the US is willing, it can apply its laws virtually anywhere in the world, as long as there is a wire, such as telephone, fax or email, that was used which had the effect of evading someone else's taxes - no matter where it occurs. To the offshore world - take note that sending an

craft or trickery is used to interfere with any governmental function, including investigation. The statute in part reads:

If two or more persons conspire either to commit any offence to defraud the United States in any manner or for any purposes, and one or more of such persons do any act to effect the object of the conspiracy, each shall be imprisoned not more than five years.

The US is not alone in aggressive jurisdiction

The US is not the only country that has aggressive notions of jurisdiction, or imposes its laws outside of the home country. For example:

- In approximately 2008, the UK to protect its citizens/companies who were depositors in Iceland, which was about to go broke, froze Icelandic assets in the UK under the Anti-Terrorism, Crime and Security Act. Even though the actions being complained about all took place outside of the UK, because of the impact on UK citizens/companies the UK acted.¹⁹
- The French courts have jurisdiction over any action in which a French national is a plaintiff - even if none of the events occurred in France, and the defendant is not French.²⁰

In Germany, jurisdiction over a foreigner can be based upon limited assets in the court's jurisdiction.²¹

Treaties

In the FIFA investigation, as with other investigations by other countries, there are often a string of treaties that will provide for investigative assistance, arrest and ultimately extradition. All of these treaties have the effect of extending a single country's laws internationally.

There are hundreds of tax treaties. The US is party to more than 65 income tax treaties, including the 1998 US - Swiss income tax treaty, under Article 26 - the Swiss assist in exchange of information.

In 1977 the US commenced entering into bilateral treaties known as Mutual Assistance in Criminal Matters, aka M-LAT treaties. The first such M-LAT treaty was between the US and Switzerland. By 10:30am on 27 May 2015 (the date of the arrest, which took place at 6am) Switzerland's Federal Prosecutor's Office said it had seized data and documents stored on FIFA's computers (but apparently older emails had already been deleted - shades of the IRS/Mrs Clinton). On 10 June the Swiss Police, as part of their investigation seized records from FIFA Zurich headquarters. It is believed that this was part of Swiss investigation of FIFA. Under the M-LAT treaty the information is likely to be shared with the US.

Extradition

Just because a FIFA official is outside the US does not mean that the US is powerless. In addition to taking people off of airplanes that momentarily land in, or even fly-over the US, or kidnapping fugitives and bringing them back to the US, it can also evoke extradition rights under any one of the extradition treaties, and informally requested to render a person to the US.²²

Extradition is one country asking another to assist it in enforcing its laws. There is no fundamental right under public international law to extradition. Traditionally, there are three bases for extradition: comity (courtesy between states), reciprocity (we will help you, if you will assist us); and treaties. The US presently has more than 120 extradition treaties - there is a treaty between virtually every country in which one would want to live.²³ Some treaties, such as the United Kingdom Treaty of 1977 have been extended to former colonies/overseas territories (for example the UK treaty covers much of the British Caribbean, such as the Bahamas, BVI, Cayman, etc.). The US-Switzerland Extradition treaty was entered into on 10 September 1997. The Swiss treaty, like many of the treaties, prohibits the extradition of the home country national. If a Swiss national such as Mr Blatter was ever charged (and there is no basis to believe he would be charged), they could not be extradited from Switzerland under Article 7 of the treaty.

Just because the requirements under a particular treaty cannot be met (eg extraditing a Swiss national from Switzerland), the US could wait for the official to go to another country the US has a treaty with where there is no such limitation, and then seek extradition. Therefore, if the US wants someone, they ask Interpol to issue a Red Notice - then information on that person's movements will be monitored and reported, and they may be arrested if they enter or try and leave an Interpol member country that has an extradition treaty. Hence, the US will ultimately be able to get their target. Red Notices have been issued for the individual FIFA indictments.

It will probably be a matter of months before the six remaining senior FIFA officials arrested in Switzerland can be extradited to the United States to face criminal charges.²⁴ However, other extradition experts are less certain about the ultimate success of the extradition request. We understand that all of the FIFA officials arrested have contested extradition, but under a bilateral treaty the proceedings are relatively straightforward. Of the seven people arrested on the 27th, six are fighting extradition while one has agreed to be extradited.

In Switzerland, if a person arrested on a

foreign arrest warrant fights extradition, criminal extradition proceedings start. The United States has to make a formal request within 40 days. Then the Swiss Federal Office of Justice must decide whether to issue an extradition order, which can be challenged. A Swiss Federal Court will rule in the case of an appeal being lodged.

Jack Warner, the indicted FIFA vice-president from Trinidad, has been fighting extradition to the US from his country. The trial date for his extradition hearing will be set at the end of August.

Hugo Jinkis and Mariano Jinkis, a father and son, who are the owners of Full Play, a sports marketing company, were also indicted have been under house arrest in Argentina, and are fighting extradition to the US. Complicating their extradition is the fact that they have been indicted by Argentina for tax evasion, and are facing charges for money laundering and defrauding the public coffers. They are under house, were fitted with electronic tags and have to check-in with the judge on a weekly basis.

Additional governmental investigations

Now FIFA, regional federations and/or their senior officials and are under further investigation by Australia, Bolivia, Cayman Islands, Columbia, Costa Rica, England, South Africa, Switzerland, and the United States. Other countries are likely to follow suit. And the US Securities and Exchange Commission has started an investigation of publicly traded companies who have been involved in soccer marketing arrangements.

Britain's Serious Fraud Office is understood to be monitoring the situation and is ready to help the US authorities. A source said: The SFO is looking to see whether any of the alleged corruption took place on British soil, by any UK firms or individuals. It has been reported that they are initiating an investigation regarding FIFA executives, and a review into British firms with links to FIFA - for example, the actions of major sponsors. These could include banks, sponsors and individuals.

For some time, the Swiss have been engaged in a criminal investigations into FIFA and the facts surrounding how the 2018 and 2022 World Cups were awarded to Russia and Qatar. We understand that as a result of the US indictment and the resignation of Mr Blatter, the Swiss will be expanding their investigation.²⁵

Australia, Columbia and Germany have called for an investigation and have requested copies of the US finding. Costa Rica has opened an investigation. Recently the Swiss parliament passed new laws classifying the heads of sporting associations (eg FIFA, UEFA, the International Olympic Committee, and many others based in Switzerland) as "politically exposed persons", meaning their bank accounts and financial dealings can be scrutinised. The

Swiss are likely to be trying out this new law in its FIFA investigation.

The Swiss Office of the Attorney General has recently expanded the scope of its investigation surrounding the awarding of the World Cup bids by Russia and Qatar; after it has received 81 suspicious activity reports from the Money Laundering Reporting Office Switzerland - which is up from the original 53 reports that it was looking at.

Unrelated to FIFA, recently the Swiss parliament held a debate on proposed laws that would apply to corrupt activities of international sporting bodies. By a narrow majority of senators they approved a proposal to make it an automatic criminal offence for anyone to give or accept bribes, but on 9 June, the Swiss House of Representatives failed by a single vote to pass the legislation.

The other shoe has yet to drop

FIFA's statutory auditor is KPMG,²⁶ which also audited a substantial number of FIFA members.²⁷ They have not made any substantive comments, claiming they are bound by professional confidentiality. However, they have no privileges in the courts of a criminal investigation in the UK, US or Switzerland. In the end, they may be a target for civil lawsuits by companies who are adversely affected by the FIFA indictments.

Sponsors will clearly be impacted - some of whom have turned a blind-eye for years on the corruption allegations against FIFA.²⁸ Some of the official sponsors of FIFA include: Adidas, Coca-Cola, Hyundai/Kia, Visa, Budweiser and McDonalds. Recently, a Nike representative said in a statement that the firm is "concerned by the very serious allegations ... and strongly opposes any form of manipulation or bribery," adding that the company is co-operating with the authorities. All of the sponsors appear concerned, and may well take action if FIFA does not take major demonstrable steps to right the ship.

Most sponsors deal with FIFA through marketing organisations, so it would be unlikely they would directly know of, or be involved with any improprieties - they merely paid legitimate marketing fees.

However, the situation is having a major business impact on FIFA - which may ultimately be the real catalyst for change.

Two top-tier sponsors, Emirates airlines and Sony, have yet to renew their contracts. In July, Coca-Cola, demanded an independent investigation and changes in the way FIFA operates. Subsequently McDonald's publicly rebuked FIFA for having "internal controls and compliance culture." Shortly thereafter, in early August FIFA announced that the international law firm of Quinn Emanuel would conduct an independent investigation, which would be shared with law enforcement. FIFA has not signed a major sponsorship

deal for the upcoming World Cup since last year's World Cup in Brazil. FIFA Secretary-General Jerome Valcke said "Definitely the current situation does not help to finalise any new agreement. That is a fact, I'm sure until the [presidential] election, ... there will not be major announcements."

Barclays and HSBC One, two British based banks linked either to FIFA or its officials and connected companies, were involved with the transfer of more than USD500,000 to the account of a luxury yacht manufacturer in London, and a USD200,000 payment which was sent through Barclays New York branch to an account in the Cayman Islands. HSBC, Barclays and Standard Charter are understood to be reviewing their internal processes relating to relevant payments that have been identified in the FIFA indictment.

The Cayman Islands Monetary Authority (CIMA) has retained KRYs Global to conduct forensic audits of any transactions linked to Jeffrey Webb. At least one current and one former Cayman Islands bank (Fidelity and Barclays), were named in connection with the US federal court indictments, although neither bank was accused of wrongdoing in court records. Initially CIMA and KRYs will focus only on the bank transactions identified in the US.

Conclusion

Perhaps only a small percentage of soccer fans actually care about what happens to FIFA or its executives, and instead are only concerned with what actually happens on the pitch. However, there is simply too much money from sponsors and host nations, and too much corruption for things to continue as they have been. This applies to FIFA, and all other large multinational charities and Non-Governmental Organisations.

"Innocent until proven guilty"²⁹ is a fundamental axiom of justice. We should all remember, the US Indictment of 14 officials and marketing executives is an allegation (even if four individuals and two companies have already pleaded guilty) there has been no trial, no conviction, and certainly all of the evidence has not yet been made public. However, there may also be truth in the proverb: 'Where there's smoke there's fire.'³⁰

END NOTES:

1. *Extraterritorial Application of American Criminal Law, Congressional Research Service, 2-15-12 by Charles Doyle, at Pg. 39.*
2. See *Offshore: Investment Magazine: Roll up! \$ Millions available in the name and shame game, January 2013, Issue 232; Good tax advice may avoid civil and criminal liability, bad advice can leave your broke, and land you in jail! June 2011, Issue 217; G-20 governments look to the offshore world to make up their deficits June 2009, Issue 197.*
3. *The Extraterritorial Reach of U.S. Patents:*

Implications for the Global Marketplace,

Gregory (BNA 2006).

<http://www.finnegan.com/resources/articles/articlesdetail.aspx?news=c9459d08-6491-4e06-8ab2-aa12db3045b7>

4. *Prosecutor with a Calling, Harvard Law Today (Spring 2015).*
5. *Will the crime-fraud exception to the privilege apply to Mr. Garcia's work - such that the details of his original 400+ page report will become public?*
6. *544 US 349 (2005).*
7. *15 USC 57b-1 [FTC], and 26 USC 982 [IRS]. A portion of UBS near billion dollar settlement related to US securities law violations.*
8. *SEC v. Manas de Artemisa S.A., 150 F 215 (9th Cir 1945).*
9. See, e.g., *US v. Vetco, 644 F2d 1324 (9th Cir 1980).*
10. See also, *In re Grand Jury Proceedings US v. Bank of Nova Scotia, 691 F2d 1384 (11th Cir 1982).*
11. *588 F Supp. 1229 (SDNY 1984).*
12. *Growing Body of Law Allows Prosecution of Foreign Citizens on U.S. Soil, Stephanie Clifford (In tl N.Y. Times - June 9, 2015). Clifford noted: Perhaps no federal prosecutor was more aggressive about expanding her office's global reach than Ms. Lynch when she was the United States attorney in Brooklyn...*
13. *It has been reported that one defendant purchased luxury homes in Stone Mountain, Georgia.*
14. *18 USC 1343.*
15. *18 USC 1436.*
16. *26 USC 7212(a).*
17. *18 USC 371.*
18. *247 F2d 908 (2nd Cir. 1957).*
19. http://news.bbc.co.uk/1/hi/uk_politics/7688560.stm
20. *Article 14 of the Civil Code.*
21. *Article 23 ZPO [Civil Procedure Code of 1877].*
22. *FIFA, Extradition and Blatter: How will it Play Out?, Clive Coleman, BBC News (June 2, 2015), this is an excellent discussion of the Swiss extradition process.*
23. *List of US extradition treaties: http://en.wikipedia.org/wiki/List_of_United_States_extradition_treaties*
24. *Reuters - Friday, May 29, 2015.*
25. *FIFA Scandal: What took Switzerland so long to Investigate? Imogen Faulkes, BBC News, Zurich (28 May 2015).*
26. *FIFA is required by Swiss law to be audited because of its revenue and number of employees.*
27. *It's been reported that KPMG is also the auditor for Russia and Qatar's organisation committees.*
28. *FIFA Scandal 'A Disaster' for Sponsors, Bill Wilson, BBC News (May 28, 2015).*
29. *A phrase coined by the English barrister Sir William Garrow (1760-1840).*
30. *The earliest recorded version is from 13th century France: "No fire is without smoke, nor smoke without fire, (onquez feu ne fut sans fume).*