

Client Alert

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Corruption in a Sporting Context – UK and Brazil – Common Issues and Practical Compliance

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INTRODUCTION

The recent indictment of senior FIFA officials as part of an FBI investigation into corrupt activities at the world football governing body has made headlines and brought corruption in sport back to the top of the international agenda. Charges relate to payments made by sports marketing companies to secure lucrative broadcasting and sponsorship deals. Two Brazilian nationals are implicated in the FBI probe, and on 28 May, Brazilian police opened a formal inquiry into alleged bribes paid to obtain contracts with the Brazilian Soccer Federation. A separate investigation by the Swiss authorities is investigating the bidding process for the World Cup tournaments in 2018 in Russia and 2022 in Qatar.

The UK and Brazil will host high-profile international sporting events in 2015 and 2016. The 2015 Rugby World Cup will commence on 18 September 2015 with twenty international teams competing in games held in England and Wales. The 2016 Rio Olympic Games will commence in August 2016 as the eyes of the world return to Brazil. Massive construction and infrastructure projects are underway to prepare for the influx of athletes and spectators.

International sporting events are immensely valuable business opportunities but also have intricate ties to political and private interests. Scrutiny of business relating to international sporting events has never been higher.

Now is a timely moment to reflect on anti-corruption issues that occur in the sports sector in the UK and Brazil. This article describes common issues, the applicable legislative framework and current “hot topics” for compliance teams.

UK AND BRAZIL – COMMON ISSUES

Corruption in a sporting context falls into these three broad categories:

1. Corruption within sporting institutions, which typically relates to business opportunities tied to sporting events.
2. Corruption relating to sporting outcomes (such as match fixing), which is often related to gambling.
3. Sporting events being used as a bribe in the form of a gift or hospitality.

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The UK has seen examples of this type of activity in football, cricket and snooker. Match fixing allegations have generally been dealt with by the relevant sports governance authorities, but there have been examples where criminal convictions have been obtained. In 2011, three Pakistani cricketers were imprisoned following conviction for conspiracy to obtain and accept corrupt payments following the Test Match of August 2010 between England and Pakistan. All three were subsequently subject to a five year ban and found guilty of conspiracy to cheat. Combined jail sentences totalling four years were handed down in 2011, comprising a thirty-month sentence for Salman Butt, a one-year sentence for Mohammad Asif and a six-month sentence for Mohammad Amir.

Brazil has seen recent examples in football and volleyball. The Brazilian authorities are currently investigating the president of *Fédération Internationale de Volleyball* (FIVB), Ary Graça. The allegations relate to commissions of R\$10 million received by Graça through sponsorship agreements with Banco do Brasil. The Brazilian authorities are continuing to investigate. A high-profile football match fixing case known as '*Máfia do Ápito*' (whistle mafia) attracted national media attention when it emerged that a referee had received bribes to disallow goals, award penalties and send off players in order to manipulate the Brazilian Sports Lottery.

Prosecution of corporate corrupt activity has been sporadic in the UK and Brazil but is likely to increase now that both jurisdictions have robust anti-corruption legislation as described below. Both jurisdictions have made reforms aimed at increasing transparency of sports teams and businesses.

UK – LEGISLATION AND ANTI-CORRUPTION INITIATIVES

The Bribery Act 2010 is the law in the United Kingdom which sets out offences in relation to public and private sector corruption. It came into force in July of 2011 and created a more robust legislative framework, allowing for the prosecution of domestic and international bribery offences in the UK. This is discussed further in our [previous client alert](#).

The Bribery Act provides strict penalties for both active and passive bribery by individuals and companies. The four prime offences are:

- Two general offences covering the offering, promising or giving of an advantage and requesting, agreeing to receive or accepting of an advantage;
- A discrete offence of bribery of a foreign public official; and
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage. A defence of this final offence is that the organisation has adequate procedures in place to prevent bribery.

The UK Government released a cross-government anti-corruption plan in December 2014. The plan collates all UK anti-corruption activity and outlines a strategic response to corruption based on four P's: Pursue, Prevent, Protect and Prepare. Sport has its own dedicated section in the Plan, and the issue of match fixing is specifically addressed in a Sports Betting Integrity National Action Plan. This will be led by a new Sports Betting Integrity Forum, which will be comprised of representatives from various sporting bodies and will be regulated by the Gambling Commission. As such, the forum will predominantly have an emphasis on the 'Prevent' and 'Pursue' objectives of the plan in the context of match fixing.

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A further issue addressed in the plan is a general reporting line for corruption in sport. The UK Home Office and Gambling Commission together will ascertain a single reporting mechanism for all types of corruption across all sectors, including sport.

BRAZIL – LEGISLATION AND ANTI-CORRUPTION INITIATIVES

On January 2014, the Brazilian Clean Companies Act ([Lei n. 12.846/2013](#)) entered into force. The Act creates an anti-corruption system similar to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act but is less ambitious in its aims. The law imposes strict civil and administrative liability to Brazilian companies for acts of domestic and international corruption. Foreign companies operating in Brazil may also be held responsible for committing acts of corruption in Brazil.

The Clean Companies Act applies to any legal entity, branch or office, whether domestic or foreign, that does business in Brazil. It prohibits bribes to any official (domestic or foreign), including persons holding a government office at any level. The Clean Companies Act prohibits facilitation payments and makes no exception for *de minimis* bribes. In addition to bribery, the Clean Companies Act also prohibits fraud, data manipulation and the obstruction of government investigations. Unlike the UK Bribery Act, the Clean Companies Act contains no defense that a company had “adequate procedures” in place to prevent corruption. Fines under the Act are potentially very large. On 18 March 2015, President Roussef issued a presidential decree ([Decreto n. 8.420/2015](#)) specifying the responsible investigative and enforcement agencies and providing guidance regarding corporate anti-corruption procedures.

The Clean Companies Act does not specifically refer to sports but the general requirements which seek to impose greater transparency and more rigorous anti-corruption compliance practices apply equally to sporting businesses. The legislation that specifically regulates sport in Brazil is ([Lei n. 9.15/98](#)). This law was updated in October 2013 and is concerned with the management of clubs and administration entities. The legislation establishes term limits for directors of sports teams and transparency requirements in accountability. If teams fail to meet these requirements, they cannot enjoy tax benefits and can't receive state funds.

“HOT TOPICS”

Client queries in this area tend to focus on the appropriate scope of anti-corruption due diligence in a commercial context and rules relating to corporate hospitality.

COMMERCIAL DEALS – DUE DILIGENCE AND CONTRACTUAL PROTECTIONS

Anti-corruption due diligence is increasingly an accepted component of broader commercial due diligence. The current focus on corruption in sporting organisations is only likely to increase this trend in this sector. A thoughtful and well-planned risk assessment and due diligence process can help to identify potential issues before they become a compliance problem. A considered due diligence process should identify structural risks and compliance weaknesses, which can be addressed in the contractual documentation.

Many regulatory bodies consider that a commercial organisation's commitment to anti-corruption compliance can be tested by examining its contracting practices and use of anti-corruption provisions. Contractual mechanisms, where parties require each other to confirm compliance with applicable anti-corruption legislation, are increasingly common but are not by themselves sufficient unless bolstered by robust risk assessment and due diligence procedures.

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Below are some example topic areas which commercial organisations in the sports sector may wish to explore at the outset of a new commercial relationship with a third party.

1. Anti-corruption and anti-bribery policies.
2. Past incidents, including ongoing or past investigations.
3. Scope of business, with a particular focus on the importance of international organisations, government tenders and public contracts or funds.
4. Scope of regulatory requirements, including licences, permits and other government approvals.
5. Sales and hospitality-related expenses.

HOSPITALITY

Corporate hospitality at sporting events is a key feature of many marketing and client relationship programmes. It is a key area of concern for many organisations who are concerned not to fall foul of applicable anti-corruption legislation.

On 9 October 2012, the UK Serious Fraud Office released an official statement of policy that acknowledged that bona fide hospitality, promotional and other legitimate business expenditures are an established and important part of doing business. The UK Government Guidance to the UK Bribery Act states that 'it is not the intention of the Act to criminalise such behaviour'.

The key principle to remember is that such entertainment must be 'proportionate and appropriate' to the context of the particular business relationship. This is linked to the seniority of the individuals involved, the value of the hospitality and the nature of the commercial relationship between host and guest. An example of inappropriate activity would include any attempt to use hospitality to improperly influence a decision maker.

Restrictions in relation to government officials are likely to be stricter in both the UK and Brazil, and more caution should be applied in this area. For example, Brazilian federal public officials were prohibited by law from accepting invitations, tickets, transportation or accommodation during the 2014 World Cup.

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