THE FIFA SCANDAL: LESSONS FOR THE CORPORATE WORLD

The recent arrests of numerous FIFA officials for racketeering, fraud, and money laundering and the subsequent resignation of FIFA president, Sepp Blatter, sent shockwaves throughout the soccer world. British Prime Minister, David Cameron, stated that this scandal provides an “opportunity to learn a broader lesson about tackling corruption.” This session covers what happened in FIFA and how the corporate world can learn from this to mitigate the risk of corruption when conducting business.

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In the early hours of May 27, 2015, Swiss authorities raided a luxury hotel in Zurich and arrested seven top executives from The Federation Internationale de Football Association (FIFA). This was at the request of the U.S. Department of Justice, which indicted 14 current and former FIFA officials and associates on charges of “rampant, systemic, and deep-rooted” corruption following a major inquiry by the Federal Bureau of Investigation (FBI).¹

The indictment alleges that for 24 years, the indicted FIFA officials and associates corrupted FIFA by engaging in various criminal activities, including fraud, bribery, and money laundering. In particular, two generations of officials abused their positions of trust for personal gain.

Overall, the officials are charged with conspiring to solicit and receive more than US$150 million in bribes and kickbacks, primarily in exchange for their official support of the sports marketing executives who agreed to make the unlawful payments. This was in connection to the commercialisation of the media and marketing rights associated with various soccer matches and tournaments, including FIFA World Cup qualifiers in the CONCACAF² region, the CONCACAF Gold Cup, the CONCACAF Champions League, the jointly organised CONMEBOL³/CONCACAF Copa América Centenario, the CONMEBOL Copa América, the CONMEBOL Copa

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² Confederation of North, Central American, and Caribbean Association Football
³ South American Football Confederation
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<td>Libertadores, and the Copa do Brasil, organised by the Brazilian National Soccer Federation (CBF).</td>
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Other alleged schemes relate to the payment and receipt of bribes and kickbacks in connection with the sponsorship of CBF\(^4\) by a major U.S. sportswear company, the selection of the host country for the 2010 World Cup, and the 2011 FIFA presidential election.

All of the above focus on historical corruption. Nevertheless, the indictment has opened a can of worms as there are also question marks over the bidding and subsequent awarding of the 2018 and 2022 World Cups to Russia and Qatar respectively. Qatar’s successful bid especially came under scrutiny because of its hot climate, with temperatures of 50°C (122°F) that occur during the time of year for the World Cup.

It is understood that both the FBI and Swiss authorities are looking at the placement of those tournaments.

**The Legal Framework**

The U.S. Foreign Corrupt Practices Act of 1977 (FCPA) is the most actively enforced international anti-corruption law, providing a plethora of lessons relating to compliance failures from prior enforcement actions.

The FCPA prohibits offering to pay, paying, promising to pay, or authorising the payment of money or anything of value to a foreign official to influence any act or decision of the foreign official in his official capacity or to secure any other improper advantage to obtain or retain business.

The U.S. indictment does not contain charges under the FCPA. The FCPA’s anti-bribery provisions only apply to

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\(^4\) Brazilian Football Confederation
bribers and not bribe recipients. The various FIFA officials are generally alleged to be bribe recipients. Additionally, FIFA is an association called a verein, which is registered under Swiss law. FIFA officials do not fall within the foreign government definitions of the FCPA. Although some of the defendants work for foreign governments, their alleged conduct in the indictment is not covered by the FCPA as the bribes in this case do not relate to carrying out their government functions.

Overall, this is a case of private sector corruption. The charges in the indictment relate to wire fraud, racketeering, and money laundering, but as discussed throughout this paper, the principles of the scandal have many parallels with anti-corruption legislation like the FCPA.

So what laws do apply? In the indictment, there were 47 charges under the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO). Additionally, the U.S. Travel Act applies. Essentially, the Travel Act makes it illegal to engage in interstate or foreign travel, use the mails, or “any facility in interstate commerce” to promote, manage, establish, or carry on an illegal activity.

**Global Anti-Corruption Compliance Benchmark**

In 2012, the two U.S. regulators responsible for enforcing the FCPA, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), published *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (the FCPA Guide). The FCPA Guide specifies ten hallmarks of a successful compliance programme:

1. Commitment from senior management and a clearly articulated policy against corruption

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2. Code of conduct and compliance policies and procedures
3. Oversight, autonomy, and resources
4. Risk assessment
5. Training and continuing advice
6. Incentives and disciplinary measures
7. Third-party due diligence and payments
8. Confidential reporting and internal investigation
9. Continuous improvement: periodic testing and review
10. Mergers and acquisitions: pre-acquisition due diligence, and post-acquisition integration

The ten hallmarks provide a universal benchmark for compliance with other international anti-corruption laws.
The guiding principles of these ten hallmarks are similar in nature to both the:

- “Adequate Procedures” guidance issued by the UK. Ministry of Justice in connection with the introduction of the UK Bribery Act; and
- The Organisation for Economic Co-operation and Development’s Good Practice Guidance on Internal Controls, Ethics and Compliance.

Lesson 1: You Can Be Subject to International Laws Based on Your Conduct, and Cooperation is Increasing Between International Authorities

Why is the U.S. the one to take action in the FIFA scandal? In this case, the extraterritorial application of U.S. law is followed because:

- Three of the defendants are U.S. citizens.
- Many of the regional soccer associations implicated have offices in the U.S.

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7 www.oecd.org/daf/anti-bribery/44884389.pdf
Several of the intermediate sports marketing companies and their affiliates have offices or operations in the U.S.

The indictment also contains several allegations concerning use of U.S. based bank accounts and phone calls from the U.S. Meetings also occurred in the U.S. in furtherance of the alleged bribery schemes.

In conjunction with the U.S. investigation, Switzerland commenced a criminal inquiry on “suspicions of criminal mismanagement and of money laundering” concerning the 2018 and 2022 World Cup bidding processes. Switzerland and the United States have an extradition treaty. This lays out the circumstances under which extradition can be granted. In particular, the U.S. government would have to file a detailed request to Swiss authorities presenting evidence that shows there is a reasonable basis to believe the FIFA officials committed the crimes they’re charged with.

The Swiss have become more cooperative with foreign authorities in recent times. Indeed, U.S. Attorney General, Loretta Lynch stated, “I would like to reiterate our thanks to the Swiss authorities who worked so well with us in co-ordinating the arrests.”

An Example in the Corporate World
Recently, BHP Billiton, the world’s largest mining company, settled an FCPA action with the SEC. The investigation arose because BHP Billiton hosted 60 foreign officials (including employees of state-owned enterprises) at the Beijing Olympic Games, as well as some of their spouses and others who joined them. As

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9 www.timeslive.co.za/sport/soccer/2015/06/03/US-law-enforcer-tight-lipped-on-Blatter
per the SEC, “BHP Billiton footed the bill for foreign government officials to attend the Olympics while they were in a position to help the company with its business or regulatory endeavours.”

As a non-U.S. company, BHP Billiton is registered in both Australia and the United Kingdom. Nevertheless, the FCPA applied as the U.S. was able to claim jurisdiction because it had American Depository Receipts, a security that represents shares of non-U.S. companies that are held by a U.S. depositary bank outside the U.S.

The SEC noted the assistance of the Australian Federal Police during its investigation.

**WHAT ARE THE KEY TAKEAWAYS?**

A company’s management needs to be aware of the anti-corruption legislation that applies to their operations around the world, and they must ensure their compliance programme covers the nuances in each applicable law.

**Lesson 2: You Must Conduct a Thorough and Objective Investigation That is Satisfactorily Concluded**

In July 2012, FIFA commissioned Michael Garcia, a former U.S. Attorney, as chairman of the investigative branch of its Ethics Committee. In August 2012, Garcia declared his intention to investigate the bidding process and decision to award the right to host the 2018 and 2022 World Cups.

Garcia’s 430-page report was finalised in September 2014. However, the chairman of the FIFA Ethics Committee adjudication chamber, German judge Hans-Joachim Eckert, 10

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stated that the report would not be made public for legal reasons. In November 2014, Eckert released a 42-page summary of his findings after reviewing Garcia's report. The summary cleared both Russia and Qatar of any wrongdoing during the bidding to host the World Cup in 2018 and 2022.

Interestingly, the summary noted that Russia provided “only a limited amount of documents available for review,” as the computers leased to the Russian team had been destroyed and several email accounts could not be accessed.

Following Eckert’s summary, Garcia issued a statement saying:

_Today's decision by the chairman of the adjudicatory chamber contains numerous materially incomplete and erroneous representations of the facts and conclusions detailed in the investigatory chamber's report. I intend to appeal this decision to the FIFA Appeal Committee._

In December 2014, Garcia resigned from his role as FIFA ethics investigator, citing a “lack of leadership” and lost confidence in Eckert’s independence from FIFA.

_An Example in the Corporate World_

We must look at Walmart, the American multinational retail corporation that operates a chain of discount department stores and warehouse stores. When they were confronted with evidence of widespread corruption in Mexico, top Walmart executives chose to focus on damage control instead of rooting out wrongdoing.
A former executive described how Walmart de Mexico had orchestrated a bribery campaign to win market dominance. In its rush to build stores, the company paid bribes to obtain permits in virtually every corner of the country.

In April 2012, the New York Times ran a report covering Walmart's alleged bribery in Mexico and the cover up that followed. Journalist David Barstow stated:

Walmart dispatched investigators to Mexico City, and within days they unearthed evidence of widespread bribery. They found a paper trail of hundreds of suspect payments totaling more than $24 million. They also found documents showing that Walmart de Mexico’s top executives not only knew about the payments, but had also taken steps to conceal them from Walmart’s headquarters in Bentonville, Ark.11

Walmart’s lead investigator, a former FBI special agent, recommended that the company expand the investigation, but instead it was shut down. The article went on further to say:

Under fire from labor critics, worried about press leaks, and facing a sagging stock price, Walmart’s leaders recognized that the allegations could have devastating consequences, documents and interviews show. Walmart de Mexico was the company’s brightest success story, pitched to investors as a model for future growth. (Today, one in five Walmart stores is in Mexico.) Confronted with evidence of corruption in Mexico, top Walmart

executives focused more on damage control than on rooting out wrongdoing.

Walmart remains under investigation by the DOJ and SEC. The investigation has expanded to Walmart’s activities in other locations, including China, India, and Brazil. It is estimated the company has spent US$612 million in investigation fees and compliance restructuring costs over the past three years. We wait to hear what penalty it may receive from U.S. regulators and others.

How much of these costs could have been avoided if the company’s initial investigation was allowed to objectively run its course?

WHAT ARE THE KEY TAKEAWAYS?
As per the FCPA Guide:

– Once an allegation is made, the company should have in place an efficient, reliable, and properly funded process for investigating the allegation and documenting the company’s response, including any disciplinary or remediation measures taken.
– The company also needs to consider the lessons learned from incidents.

So, when the findings of an internal investigation are identified, what is next? In its charging guidelines, the DOJ considers factors such as:

– The nature and seriousness of the offence.
– The pervasiveness of wrongdoing within the company, including the complicity in, or the

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condoning of wrongdoing by corporate management.

- The company’s history of similar misconduct.
- The company’s timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the regulatory investigation.
- The existence and effectiveness of the company’s pre-existing compliance programme.
- The company’s remedial actions, including any efforts to implement an effective compliance programme or improve an existing one, replace responsible management, discipline or terminate wrongdoers, pay restitution, and cooperate with the relevant government agencies.

Whilst this paper does not go into detail about self-reporting a bribery or corruption incident to the relevant authorities, the following FCPA case examples contrast the different approaches taken by two corporates. In 2013, a former managing director of the financial institution Morgan Stanley, Garth Peterson, pleaded guilty to violating the FCPA through property dealings in China. Both the SEC and DOJ declined to charge Morgan Stanley primarily for three reasons:

- The company constructed and maintained a system of internal controls aimed at providing reasonable assurance that employees were not bringing government officials.
- The company conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved.
- The company voluntarily disclosed the matter to the U.S. authorities and cooperated throughout the regulatory investigation.
In contrast, the French power and transportation company Alstom S.A., was levied the largest FCPA criminal fine to date in the amount of US$772 million. Alstom paid more than US$75 million to secure US$4 billion in projects around the world, with a profit to the company of approximately US$ 300 million. The fine was so large because:

- Alstom failed to voluntarily disclose the misconduct even though it was aware of related misconduct at a U.S. subsidiary.
- The company failed to fully cooperate with the DOJ’s investigation for several years.
- The company lacked an effective compliance and ethics programme at the time of the conduct.

Alstom only began cooperating after the DOJ publicly charged several of the company’s executives.

As discussed above, in the case of FIFA, Garcia subsequently resigned following his investigation because the Eckert summary was “materially incomplete and [made] erroneous representations of the facts and conclusions.” The overall lesson is pretty simple for corporates. If this were a corporate answering to a regulator like the DOJ, it would likely not be viewed as a thorough investigation if the findings were simply suppressed and no remedial action was taken.

**Lesson 3: Whistle-blower Protection is Paramount**

Phaedra Al-Majid worked as an international media officer for the Qatar World Cup 2022 bid team before losing her job in 2010. Her allegations that Qatari bid officials gave US$1.5 million each to three African FIFA executives to
pay for their votes first came to light in 2011. Later the same year, she signed an affidavit saying they were false.

Al-Majid said officers from the FBI visited her in September 2011 after they became aware of threats against her. She later claimed that the affidavit was signed under duress. In particular, "I had no more legal representation," she said in an interview with the BBC. "When the Qatars approached me, I was alone. I'm also the single mother of two children, one of whom is severely autistic and severely disabled."

As a postscript to that, both Al-Majid and Bonita Mersiades, a member of the Australia World Cup 2022 bid team, complained to FIFA’s disciplinary committee after the publication of Eckert’s disputed summary of Garcia’s investigation. While the women were not named in the summary, they both claimed they could be clearly identified by the information provided having claimed that FIFA promised them anonymity if they cooperated with the investigation. The summary described witness testimony as unreliable and lacking credibility. Al-Majid said “I’m still furious with the way I was portrayed,” and “I was stupid enough to trust that FIFA wanted to find the truth.”

An Example in the Corporate World

In the first successful prosecution under Australia’s foreign bribery legislation, it was alleged that two subsidiaries of the Reserve Bank of Australia (RBA), the Securency International Pty Ltd and Note Printing Australia Pty Ltd (NPA), had engaged in widespread bribery and corruption of foreign public officials in various Asian and other countries to secure banknote printing contracts. This was either direct or through intermediaries who received large commission
payments from where it was alleged bribes to foreign public officials would be paid.

In 2007, the former Company Secretary of NPA, Brian Hood, alerted various directors of NPA and Securency that the two companies were using overseas agents he suspected of paying bribes to win note-printing contracts. Hood wrote an extensive memorandum to the RBA’s Deputy Governor but, in 2008, Hood was made redundant after allegedly being told his position had become untenable. Hood believes he was victimised for airing his concerns. It was only after a media report in 2009 that the Australian authorities commenced an investigation.

WHAT ARE THE KEY TAKEAWAYS?
Whistle-blower protection is paramount, which is why it is the law in many jurisdictions and generally enshrined in company policy. Any organisation that is serious about stamping out integrity issues such as fraud and corruption will have a whistle-blower hotline. As per the 2014 ACFE Report to the Nations, over 40 percent of integrity events are identified via tip-offs, with employees accounting for more than half of such tips. Organisations with hotlines are more likely to get those tips earlier and in greater number—compared those without a hotline, the number of tips is more than 20 percent.

Some considerations for a company implementing a whistle-blower hotline include:
- A way for reports to be anonymous or made confidentially.
- No fear of retaliation for a person making a tip in good faith.
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- A variety of reporting mechanisms in the different languages applicable to the company’s international operations (e.g. telephone hotline, email address, online form, dedicated mail address).
- Awareness of the hotline through training employees, listing in the code of conduct, and advertising throughout company premises (e.g. employee lunchroom).
- Making the hotline available to other relevant stakeholders (e.g. suppliers).
- Periodically testing the reporting mechanism, including across the company’s various international locations.

We do not know all the details surrounding Al-Majid and her disclosures, and we can’t say for certain whether those disclosures were made in good faith and not made up or elaborated as part of a get square following her dismissal. However, as discussed previously and, in relating Al-Majid’s experience to the corporate world, the importance of tips in stamping out integrity issues mean her allegations would be deserving of a thorough and objective investigation.

Lesson 4: You Cannot “Outsource” Bribery to an Agent
Traffic Group is a sports management company in Brazil founded by Jose Hawilla. Its subsidiary, Traffic Sports Management, was involved in procuring bribes and kickbacks for football officials in the award of television rights for CONCACAF’s Gold Cup in the 1990s and 2000s. It is also alleged to have paid bribes on behalf of companies looking to secure apparel and sports equipment deals with South American football federations.
According to numerous media outlets, the sportswear manufacturer referred to in the indictment is Nike. Nike became the major sponsor of the Brazilian national football team in 1996. At the time it entered into this sponsorship, Nike was not prominent in the football world. The contract helped drive the company’s revenue and sponsorship. As per The Guardian¹³:

Joining the dots from the information provided by U.S. prosecutors leads inextricably to Nike’s US$ 160 million deal with Brazil and from there to difficult questions for the company about the allegation that it paid tens of millions of dollars into a Swiss bank account outside of the original sponsorship contract. That money, the U.S. indictment alleges, was divvied up as ‘bribes and kickbacks’ paid to an official who negotiated the deal on behalf of Brazil although there is no suggestion that Nike knew.

Specifically, the indictment alleges that US$ 30 million was paid to Traffic Sports by the sportswear manufacturer, and half of that money was later used for kickbacks and bribes.

**An Example in the Corporate World**

One of the major FCPA enforcement actions involving the use of agents is by the telecommunications equipment company Alcatel-Lucent. In 2010, the company received a US$ 137 million penalty for bribing officials in Costa Rica, Honduras, Malaysia, and Taiwan to win local contracts.

In Costa Rica, the company’s subsidiary won three contracts worth more than US$ 300 million. The

¹³ www.theguardian.com/football/2015/may/29/nike-fifa-crisis-brand
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subsidiary wired more than US$ 18 million to two consultants in Costa Rica who had been retained by the company to obtain business locally. The consultants then passed on more than half of this money to various Costa Rican government officials for assisting the company in obtaining and retaining business.

In Honduras, the company’s subsidiary hired a consultant who was a perfume distributor with no experience in the area of telecommunications. This consultant was hired by the brother of a senior Honduran government official. Whilst in Taiwan, the company and its joint venture hired two consultants with no telecommunications experience, and the consultants subsequently passed some of their US$ 950,000 payments to Taiwanese legislators.

WHAT ARE THE KEY TAKEAWAYS?
Many companies doing business in foreign countries retain local people or companies to help conduct business. Although these foreign agents may provide legitimate advice regarding local customs and procedures and may help facilitate business transactions, they can also be used as a conduit for a company to bribe.

The FCPA expressly prohibits corrupt payments made through third parties or intermediaries. Before engaging a third party such as an agent, a company should conduct due diligence. This is considered by the DOJ and SEC when assessing the effectiveness of a company’s compliance programme should the company be subject to regulatory scrutiny.

The level of due diligence required depends on the industry, country, size, and nature of the transaction.
with the third party. However, some guiding principles apply:
- The company should understand the qualifications and associations of its third-party partners, specifically its business reputation and relationship with foreign officials. This may include having the vendor complete a questionnaire and verify the information provided through means including but not limited to vendor interviews, Internet searches, and engaging a third-party to conduct background checks.
- The company should understand the business rationale for including the third-party in the transaction, that the vendor contract specifies the services to be provided, and whether payment terms and compensation to be paid are in line with industry and country norms.

Additionally, the company should:
- Incorporate anti-corruption clauses in third-party contracts.
- Communicate and train relevant third-parties on the company’s stance on anti-corruption.
- Obtain periodic representations and warranties from relevant third parties regarding anti-corruption compliance.
- Use audit rights included in contract terms and conditions to ensure there have been no violations.
- Periodically update the existing due diligence performed on third parties.

Overall, the key lesson here is to check out agents thoroughly and then watch them closely.
Lesson 5: A Company Cannot Use the Pretense of Charitable Contributions to Funnel Bribes

As mentioned previously, one of the key aspects of the indictment is the South African Government’s alleged payment of US$ 10 million to promote Caribbean football. The U.S. authorities allege the payment was made so that South Africa could secure the rights to host the 2010 World Cup.

The payments were made to CONCACAF and were allegedly made as a donation to promote Caribbean football, specifically the African diaspora legacy programme. However, a couple of the questions that arise are:

- Was the US$ 10 million excessive for South Africa to give and for the Caribbean to receive as a donation to CONCACAF?
- Why was the US$ 10 million given without ‘conditions’ specifying how it should be spent?

It has since transpired that former FIFA Vice President and President of CONCACAF, Jack Warner, used the payments for cash withdrawals, personal loans, and to launder money. The BBC identified that the US$ 10 million was transferred from FIFA accounts to CONCACAF accounts controlled by Jack Warner on three occasions in early 2008. At that time, Warner was in charge of CONCACAF and in a position to help South Africa secure the rights to host the 2010 World Cup.

Going further, documents have revealed that US$ 4.86 million was received by JTA Supermarkets, a large chain in Trinidad, and nearly US$ 1.6 million was used to pay Warner’s credit cards and personal loans.
Another interesting aspect is that it was too difficult for the South African government to send the money directly to CONCACAF, so instead, FIFA money that was meant for South Africa was used to make the payment.

**An Example in the Corporate World**

In the FCPA, there is one classic case about donations, which is the one in which pharmaceutical company Schering Plough was subject to an enforcement action by the SEC for payments it made in Poland.

The company’s Polish subsidiary made improper payments to a bona fide charitable organisation called the Chudow Castle Foundation, which restores and recreates castles in Chudow, Poland. The head of the Foundation was the director of the Silesian Health Fund, a Polish governmental body. The Fund provided money for the purchase of pharmaceutical products and influenced the purchase of those products by other entities, such as hospitals.

Comparing to the South African example as to why they donated money to CONCACAF, you have to ask why Schering Plough would make such a donation. How does restoring castles relate to the company? In this example it was because the head of the Foundation could sign off on the purchase of the company’s products in the Polish health system.

Going further, the SEC identified that Schering Plough’s internal documents established that the payments were not viewed as charitable contributions but rather as dues the subsidiary was required to pay for assistance from the director of the Silesian Health Fund. It was also found that the payments constituted a significant portion of the Polish subsidiary’s total...
promotional donations, and it was not in compliance with the company’s internal policies, which specified that donations should generally be made to health care institutions and relate to medical practice.

WHAT ARE THE KEY TAKEAWAYS?
The U.S. regulators list five questions in the FCPA Guide that you should ask when making charitable payments:

- What is the purpose of the payment?
- Is the payment consistent with the company’s internal guidelines on charitable giving?
- Is the payment being requested by a foreign official?
- Is a foreign official associated with the charity and, if so, can the foreign official make decisions regarding your business in that country?
- Is the payment conditioned upon receiving business or other benefits?

Going further and in a practical sense, a corporate should consider:

- Conducting adequate due diligence on the receiving organisation and its key people—are they (or do they have close links to) government officials, and does the business deal with them?
- Making the recipient sign an agreement confirming what the funds are used for and that they have no close links to government officials.
- Having a right to audit clause in the agreement and monitoring the efficacy of the organisation’s programme.
- Making the recipient provide reporting/documentation on how the funds have been used.
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- Transferring the funds to a legitimate bank account.
- Having strong internal review and approvals—who signs off on what value and how is it reported and then recorded in your accounts?
- Whether the payment falls within your company’s charitable giving guidelines or themes?
- Checking local law to identify that the payment made is not illegal. There may be restrictions on amounts or local disclosure requirements.

### Lesson 6: A Bribe Does Not Necessarily Involve a Transfer of Money

When Han-Joachim Eckert released the 42-page summary of his findings after reviewing Michael Garcia’s report, he was highly critical of England’s bid to host the 2018 World Cup.

Eckert’s summary mentioned that Garcia’s report indicated “the bid team often accommodated Mr Warner’s wishes, in apparent violation of bidding rules and the FIFA Code of Ethics.”

Going further, his summary stated:

*Relevant occurrences included Mr. Warner pressing, in 2009 and again in 2010, England’s bid team to help a person of interest to him to find a part-time job in the UK. According to the findings of the Investigatory Chamber, England 2018’s top officials in response not only provided the individual concerned with employment opportunities, but also kept Mr. Warner apprised of*

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14 www.fifa.com/mm/document/affederation/footballgovernance/02/47/41/75/statementchairmanadjcheckert_neutral.pdf
their efforts as they solicited his support for the bid. In the opinion of the Investigatory Chamber of the FIFA Ethics Committee, by providing the individual concerned employment, England 2018 gave the appearance that it sought to confer a personal benefit on Mr. Warner in order to influence his vote.

An Example in the Corporate World
Numerous major financial institutions have come under scrutiny for hiring the children of high-ranking government officials.

Recently, BNY Mellon settled charges with the SEC that it violated the FCPA by providing student internships to family members of foreign government officials affiliated with a Middle Eastern sovereign wealth fund. The SEC’s investigation found that BNY Mellon did not evaluate or hire the family members through its highly competitive internship programmes. These programmes have stringent hiring standards and require a minimum grade point average and multiple interviews. The family members did not meet the rigorous selection criteria but were hired with the knowledge and approval of senior BNY Mellon employees.

The bank’s employees viewed the internships as important to keeping the wealth fund’s business sovereign. The SEC state, “senior managers were able to approve hires requested by foreign officials with no mechanism for review by legal or compliance staff.”

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WHAT ARE THE KEY TAKEAWAYS?
Hiring children of government officials in every case would not necessarily be a violation of the FCPA. To help ascertain whether such a person should be hired, the following could be considered:
- Stick to normal hiring processes that exist within the company.
- Apply the same standards to these candidates as with others.
- Have policies and procedures in place that help determine whether a candidate is connected to a public official and whether the timing of the hire is around a key business decision involving the public official.
- Train employees involved in hiring on the potential risks.
- Tell foreign officials asking for the favour that such a request is off limits.

Lesson 7: Bribery Laws Can Be Breached Even if the Purpose of the Payment is Not Achieved
In 2010, FFA\textsuperscript{16} paid US$ 500,000 to CONCACAF to assist in renovating a stadium in the Caribbean. The funds were allegedly misappropriated by Jack Warner and were never used for the intended purpose. At the time, Australia was seeking to be awarded the right to host the 2022 World Cup.

As per \textit{The Age}, it has been alleged that the FFA knew of Warner’s shady reputation:
\begin{quote}
When the FFA made the payment to the bank account of a regional soccer organisation linked closely to Mr. Warner, he had been openly accused
\end{quote}

\begin{footnotes}\item[16] Football Federation Australia\end{footnotes}
for years of corruption and of using the organisation for personal gain.\textsuperscript{17}

The article went on further to say:

The reason the FFA was reluctant to report the theft may be because it could further expose the highly risky manner in which it gave ‘international development’ grants to corruption-riddled overseas football bodies at a time when the FFA was also seeking their support for Australia’s bid to host the World Cup.

It is understood that the US$ 500,000 payment by FFA has been reviewed by the U.S. authorities. The matter has also been referred to the Australian Federal Police.

Ultimately, Australia’s bid to host the 2022 World Cup resulted in just one vote.

\textit{An Example in the Corporate World}

The agrochemical and agricultural biotechnology corporation Monsanto was subject to an enforcement action by the DOJ and SEC in 2005 for violating the FCPA. In 2002, a senior Monsanto manager based in the United States authorised and directed an Indonesian consulting firm to make an illegal payment of US$ 50,000 to a senior Indonesian Ministry of Environment official. The consulting firm was engaged to assist Monsanto in obtaining various Indonesian governmental approvals and licenses necessary to sell its products in Indonesia.

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<td>The payment was made to influence the senior Environment official to repeal an unfavourable decree that was likely to have an adverse effect on Monsanto’s business, specifically Monsanto’s need to conduct an environmental impact study. Even though the payment was made, the unfavourable decree was not repealed.</td>
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<tr>
<td>WHAT ARE THE LESSONS FOR THE CORPORATE WORLD?</td>
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<tr>
<td>Zero tolerance for all forms of bribery and corruption is the standard to which every company must hold itself to.</td>
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