

Application of the U.S. RICO Act to the FIFA Corruption Scheme

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FIFA INDICTMENT

“The Department of Justice is committed to ending the rampant corruption we have alleged amidst the leadership of international soccer – not only because of the scale of the schemes, or the brazenness and breadth of the operation required to sustain such corruption, but also because of the affront to international principles that this behavior represents.”

– U.S. Attorney General Loretta Lynch

FIFA INDICTMENT

- Defendants **breached the U.S. financial system** to promote and conceal their criminal schemes.
- One **of the most complex worldwide financial investigations ever conducted.**
- Defendants **conspired** to enrich themselves through **bribery and kickback schemes** relating to media and marketing rights.
- Defendants **undermined the process of fair and open competition.**

HARM IN THE FIFA CASE

In the FIFA case, the principal harm is

- The deprivation of the right of various FIFA member organizations and individuals **to the honest and impartial services** of the FIFA defendants who were supposed to represent their interests, and
- The **resultant corruption** of the entire FIFA decision-making process.

WHY THE UNITED STATES?

The Indictment describes the effect of the FIFA corruption scheme on the United States:

- A number of financial transactions related to the bribe payments were **routed through U.S. banks.**
 - A number of football matches in tournaments that were the subject of various bribe schemes were **played in the U.S.**
 - The **U.S. media market** made up a significant portion of media rights that were the subject of bribes.
 - Some bribes were actually **paid within the U.S.**
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RICO AND CORRUPTION

- The United States is approaching FIFA as it would the Mafia or other Organized Crime Enterprises.
- RICO was originally designed to combat organized crime, but is well-suited to combatting wide-spread corruption among organizations, such as FIFA and its affiliates.

FIFA SCHEME

- FIFA has been referred to as a “massive, multifaceted, bribery ring.”
- This would suggest that it would fall squarely under RICO as an enterprise engaging in a pattern of racketeering activity.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ACT

It is the purpose of [RICO] to seek the eradication of organized crime in the United States

- by strengthening the legal tools in the evidence-gathering process,
- by establishing new penal prohibitions, and
- by providing enhanced sanctions and new remedies

to deal with the unlawful activities of those engaged in organized crime.

- According to the "Statement of Finding and Purpose" of RICO.

RICO ELEMENTS

The government must prove that:

- 1) An **enterprise** existed which affected interstate commerce;
- 2) The **defendant was connected** with the enterprise;
- 3) The defendant conducted or engaged in racketeering activity through the commission of **at least two acts of racketeering**; and
- 4) The defendant engaged in a **pattern** of racketeering activity

RICO ENTERPRISE

The term “enterprise” includes:

- any individual, partnership, corporation, association, or other legal entity, and
- any union or group of individuals associated in fact although not a legal entity.

FIFA ENTERPRISE

The alleged enterprise includes **all six of FIFA's continental confederate organizations**, including those governing soccer in Asia, Africa and Europe.

Almost all of the **alleged corruption**, however, relates to officials and events in only two of those organizations:

- **CONCACAF**, the confederation covering North and Central America and the Caribbean; and
- **CONMEBOL**, the confederation covering South America.

CONNECTED TO THE ENTERPRISE

- Knowingly participate, directly or indirectly, in the conduct of the affairs of an enterprise.
 - No official position in the enterprise needed.
 - No formal alignment with an enterprise needed.
 - May be by means of an informal or loose relationship.
- “Associated” means:
 - to be joined, often in a loose relationship, as a partner, fellow worker, colleague, companion, or ally.
- Role in the enterprise may be very minor.

DEFENDANTS' CONNECTION TO THE FIFA ENTERPRISE

The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

Purpose: The promotion and regulation of football worldwide.

RACKETEERING ACTIVITY (PREDICATE ACTS)

- Laid out in State or Federal Statutes
 - Bribery
 - Sports Bribery
 - Extortion
 - Mail & Wire Fraud
 - Money Laundering
- Can violate US domestic law or have Extraterritorial Application

FIFA PREDICATE ACTS

Bribery (New York State Law)

- Series of bribes and/or kickbacks involving FIFA officials or officials of FIFA member organizations.

Wire Fraud (Federal Law)

- Bribery money wired into the US (31 US banks)

Money Laundering (Federal Law)

- Financial transactions were designed to facilitate or disguise the payments
 - (building a swimming pool or gifting expensive art).
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RICO PATTERN: 2 OR MORE ACTS

- Continuity
 - Refers either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition
- Relationship
 - A Pattern is based on the relationship that predicate acts bear to each other or to some external organizing principle.

FIFA PATTERN

The indictment alleges a series of different corruption schemes involving:

- various soccer tournaments,
- different sports marketing and media agreements, and
- events such as the selection of the host city for the World Cup

FIFA PATTERN

- Between 1991 and the present, the defendants and their co-conspirators corrupted the enterprise by engaging in various criminal activities, including fraud, bribery and money laundering.
- This includes ongoing schemes that would be likely to continue into the future.
- The various acts were connected to bribery and the DEFs' personal enrichment.

PENALTIES AND FORFEITURES

- Asset Forfeiture
 - Possibly be distributed to football organizations outside the U.S. whose officials were DEFs.
 - Convicted DEFs to pay more than \$190 million in forfeitures.
 - More than \$100 million has been restrained in the United States and abroad.
 - The U.S. has issued mutual legal assistance requests for the restraint of assets in 13 countries.

Thank You!