

## ***COMPLIANCE LESSONS LEARNED FROM THE BEAUTIFUL GAME***

### ***1. Compliance, FIFA and the Award of the 2022 World Cup***

One of the interesting facts of life that I have learned being married to an English woman is that what I thought of as ‘Football’ is really ‘American Football’. The true game of ‘Football’ is played by the rest of the world. Unfortunately for the governing body of the worldwide game of football, the Fédération Internationale de Football Association (FIFA), anti-corruption compliance does not appear to be at the top of its list of priorities. In this eBook, I will look at some of the anti-corruption compliance issues raised through the prism of FIFA, its award of the 2022 to Qatar and the 2014 World Cup tournament.

#### ***A. Award of the 2012 World Cup Bid to Qatar***

FIFA is known as these days, as the “world’s richest and most influential single-sport ruling body”. As has been reported extensively throughout the world, two members of FIFA’s 24 member executive committee were suspended for allegedly offering their votes to determine which countries would host the 2018 and 2022 World Cups. Both men were caught on videotape by the UK Sunday Times asking for specific sums of money, apparently in exchange for their votes. The New York Times (NYT), in an October 20, 2010 article, reported that Reynald Temarii, the Tahitian President of FIFA’s Oceanic regional confederation, reportedly said that he wanted “about \$2.3 million to finance a sports academy” in New Zealand. Amos Adamu, the Nigerian representative, was alleged to have requested approximately \$790,000 to fund the construction of soccer fields in Nigeria. Mr. Adamu reportedly asked for “cash to be paid into his personal account”. FIFA President Seth Blatter was quoted as saying that the two men’s actions had “created a very negative impact on FIFA and on the bidding process”. On November 17, 2010, the FIFA Executive Committee did take action as both men were suspended by FIFA for their actions; subsequently both men have recently had the appeals of their suspensions denied by the FIFA appeal committee. Rueter’s has reported that Adamu will appeal his upheld suspension by FIFA to the Court of Arbitration for Sport in Lausanne.

In yet another interesting development, The Telegraph reported that the countries of Spain and Qatar had colluded to trade their votes for their respective 2018 and 2022 bids. These allegations of collusion between the two bids were initially reported in September, 2010 but they were denied by both countries. A subsequent investigation by FIFA’s ethics committee said that there was insufficient evidence to take any action. On Monday, February 7, FIFA President Seth Blatter told the BBC that the two bids had colluded, though he insisted it had made no difference to the final outcome, which saw Russia and Qatar win the 2018 and 2022 tournaments respectively. “I’ll be honest, there was a bundle of votes between Spain and Qatar,” Blatter said. “But it was a nonsense. It was there but it didn’t work, not for one and not for the other side.”

I was also interested in the bid awarded to Qatar to host the 2022 World Cup. In a January 13, 2011 article in the Wall Street Journal (WSJ), entitled “*Qatar’s World Cup Spending Spree*”, reporter Matthew Futterman detailed the “spending spree” of a reported one year amount of \$43.3 million by Qatar, which led to its winning World Cup bid. Futterman’s article focused on information derived from the internal documents of Qatar’s bidding committee. Futterman reported that there was no evidence that Qatar violated the rules and regulations of FIFA to secure its winning bid. Rather he reported on how Qatar “worked within FIFA’s broad guidelines” to secure its winning bid.

From the internal bid documents, obtained by the WSJ, Futterman reported that some of the tactics used by Qatar included:

**1. Charitable Donations.** Commitments were made to establish, build or continue to fund soccer academies, in the home countries in which FIFA executives who would vote on the 2022 site selection, through a Qatar football training academy, Aspire Academy for Sports Excellence, controlled by the Qatar Royal Family. The WSJ article cited examples in Thailand and Nigeria. In Thailand, Futterman reported that Aspire would “build a football academy” and in Nigeria, it would “expand grass-roots training”. These internal documents also revealed that the Aspire Academy also continued to work with three African countries which were home to FIFA executive committee members, who all had a vote on the 2022 site selection.

**2. Use of Marketing Agents.** The Qatar bid included the hiring of certain well known celebrities to assist in the effort. In order to “talk up” the Qatar bid to host the 2022 World Cup, the WSJ reported that it hired several international personalities as “Bid Ambassadors” to endorse the Qatar bid. These endorsements were important because they assisted Qatar to “establish its legitimacy within FIFA and connections to executive committee members.” The only Bid Ambassador named in the WSJ article was the former French star Zidane. It was reported that Zidane received \$3 million for his endorsements of the Qatar bid.

## ***B. Review under the FCPA and Bribery Act***

FIFA is generally recognized as a, non-US, Non-Governmental Organization (NGO) and therefore the US Foreign Corrupt Practices Act (FCPA) does not apply to it. However, it might be of use to review some of the tactics, as reported in the WSJ, that Qatar used to secure the 2022 World Cup bid, in the context of what might be allowed under the FCPA. It should be noted that, although the acts took place prior to the UK Bribery Act effective date of July 1, 2011, that law would apply to UK companies and citizens involved in the matter because there is no public/private distinction under the Bribery Act and unlike the FCPA, the Bribery Act does not have require that a bribe be offer or paid to a *foreign governmental official*, only that a bribe or offer to bribe be made.

### **A. Charitable Donations-the Football Academies**

Charitable donations are not banned by the FCPA. However any such donations must be made following the requirements of the Act. The FCPA Blog reported that when asked about the guidelines regarding requests for charitable giving, the FCPA then Deputy Chief of the Criminal Division's Fraud Section at the DOJ Mark Mendelsohn, said that any such request must be evaluated on its own merits. He advocated a "common sense" approach in identifying and clearing **Red Flags**. This would include determining if a governmental decision maker held a position of authority at the charity to which the donation would be made; whether the donation was consistent with a company's overall pattern of charitable giving; who made the request for the donation; and how was it made.

The series of **Red Flags** raised and cleared by the US Company was the subject of Opinion Release 10-02. After initially listing the 3 levels of due diligence in which the company had engaged prior to finalizing its choice of local entity to receive the donation in question; the DOJ noted that the donation 'requested' of the US Company would be subject to the following controls:

- Payments of the donations would be staggered over a period of eight quarters rather than in one lump sum.
- Ongoing monitoring and auditing of the funds use for a period of five years. The donations would be specifically utilized for the building of infrastructure.
- The funds would not be paid to the parent of the organization receiving the grant and there was an absolute prohibition on compensating Board Members.
- The proposed grant agreement under which the funds would be donated had significant anti-corruption provisions which included a requirement that the local organization receiving the funds adopt an anti-corruption policy and that US company making the donation receive full access to the local organization's books and records.

In addition to the specific factors presented by the requesting US Company in Opinion Release 10-02, the DOJ also listed several of the due diligence and/or controls that it had previously set forth in prior Opinion Releases relating to charitable donations. These included:

- certifications by the recipient that it will comply with the requirements of the FCPA;
- due diligence to confirm that none of the recipient's officers or directors are affiliated with the foreign government at issue;
- a requirement that the recipient provide audited financial statements;
- a written agreement with the recipient restricting the use of funds to humanitarian or charitable purposes only;
- steps to ensure that the funds were transferred to a valid bank account;
- confirmation that contemplated activities had occurred before funds were disbursed; and
- ongoing auditing and monitoring of the efficacy of the program.

#### B. Use of Marketing Agents-the Bid Ambassadors

Much has been written on the use of agents under the FCPA. The UK Ministry of Justice Consultative Guidance on the Six Principals for an “*adequate procedures*” or *best practices* anti-bribery and anti-corruption program also discuss agents. Recently, Michael Volkov, noted FCPA attorney from the firm of Mayer Brown, spoke on the topic of due diligence on third parties. Volkov believes the key for any compliance based issues is to document the evidence. If you ask questions and get answers, document the process. If you ask questions and do not receive answers, document that process too. But the key is to Document, Document, and Document.

Volkov gave his thoughts on some of the basic pieces of information to cover when a company might begin the due diligence process. This would include:

1. Existence of relationships with foreign governmental officials.
2. Prior history of bribery or other crimes.
3. What is the nature of services provided?
4. What is the compensation and what will be the payment method?
5. Have a written contract in place with appropriate terms and condition’s including:
  - a) Reps and Warranties on compliance;
  - b) Right to inspect and audit books and records; and
  - c) Right to terminate if you believe that a violation has occurred.

Howard Sklar, writing in the Open Air Blog, added the following inquiries should also be made:

1. Are any of the leaders of the company (beneficial owners, or senior management) government officials, or related to government officials?
2. Is this company going to interact with or sell products to government officials on your behalf?
3. Is the third party publicly traded, or subject to regulatory oversight?
4. How did you first become aware of this third party?
5. Is the company what you’d expect—in terms of size, resources, office space, etc.—to allow the third party to provide the services they’re providing to you?
6. How is this company going to get paid? Unusal payment arrangements are a red flag.
7. How much is this company going to get paid? Is it amount in line with what the market value is?
8. Will the company provide business references?
9. Is anyone from senior management, or are the beneficial owners, on the Special Designated Nationals (SDN) or debarred parties list?
10. Has this company been in the news for something negative? Do a Google news search.
11. Has the third party said or done anything that makes your people nervous?
12. Was the procurement/onboarding process run according to normal channels or was it a rush job?

The point of both of these lists of questions is that in order to secure an agent under the FCPA or Bribery Act, a significant investigation, in the form of background due diligence, must be employed. When a company does business with higher-risk third parties, you need to understand not just the parties involved, but the transactions that follow. This means that a company must also proceed with transactional due diligence. The most important thing to know is, will there be money left on the table? You need to know where that money is going. Under the FCPA if the end user is a Government, you need transaction-level diligence if you want to be safe. However, the Bribery Act does not make this governmental/non-governmental distinction.

Remember the former French star Zidane and his \$3 million payment? The question is what was he, and the other Bid Ambassadors, paid to do? According to the WSJ, they “helped to establish Qatar its legitimacy within FIFA and *connections to executive committee members*”. such a purpose might well require audit rights to determine where the money paid to the agent went and whether it can be accounted for in a financial review. But there is one further analysis, which was alluded to by Howard Sklar in his list, that being the **amount** paid to the agent. A commission rate can be a percentage of a successful bid or it can be a flat rate, fixed fee payment. In this situation we do not know what the financial reward to Qatar will be for hosting the 2022 World Cup. Indeed, the reward may not be financial but rather the prestige of hosting the quadrennial championship of the world’s most popular sporting event. So there may be no such measure of the Zidane payment. But if the figures cited in the WSJ article are correct, Zidane received an amount of almost 10% of the Qatar one-year budget. That must have purchased some serious connections. Such a high figure, in an applicable situation, might well lead to significant FCPA and Bribery Act scrutiny.

Happily for the Qatar bid committee, it probably did not fall within the jurisdiction of the FCPA and thus there should be no FCPA implications for the bid committee. Since the Bribery Act is was not yet implemented, there are no implications under it for the UK Serious Fraud Office (SFO) to pursue.

## **2. *More Bad News on the 2022 World Cup Bid***

Allegations regarding corruption in the 2022 World Cup Tournament selection site, took a turning point in late May when The Sunday Times rocked the sporting world with its article “*Plot to Buy the World Cup*” by Jonathan Calvert and Heidi Blake. In the article, they reported that a number of football officials took £3m in return for support of the Qatari bid. The BBC, in an article entitled “*Qatar World Cup 2022: Investigator nears probe conclusion*”, said that “The Sunday Times claims to have obtained secret documents that implicate the former AFC president in corrupting members of football's governing body to win the right to stage the 2022 World Cup. The newspaper alleges the documents, seen by BBC sports editor David Bond, show that Qatari Bin Hammam, 65, was lobbying on his country's behalf at least a year before the decision to award the country hosting rights. They also allegedly show he had made payments into

accounts controlled by the presidents of 30 African football associations and accounts controlled by Trinidadian Jack Warner, a former vice-president of Fifa.”

While these allegations are certainly sensational, they are not the first time that questions have been raised as to whether improper payments were made to influence the vote awarding the 2022 World Cup Championship to Qatar. In 2010, the NYT raised such issues and in 2011 so did the WSJ. Moreover, there have been other issues raised regarding Qatar’s bid to host the World Cup. One is its treatment of the workers who are building the stadiums for the event. In an article in the online magazine Slate, entitled “*The Qatar World Cup Is a Human Rights Catastrophe. It’s Time to Do Something About It.*” Jeremy Stahl reported that the Nepali embassy has said 400 citizens of its country had died during construction in Qatar and India has reported that 500 of its citizens have died. The article quoted Sharan Burrow, the general secretary of the International Trade Union Confederation (ITUC), who said in an ESPN documentary “that at current rates, 4,000 people will die to make the 2022 World Cup a reality.” The ITUC itself had reported in March that there had been 1200 deaths in the construction of the facilities for the World Cup.

Another significant issue is the heat. Qatar can reach between 40-50C during the summer months, and for those of you who don’t read Celsius temperatures that translates to between 104 to 122 degrees Fahrenheit. I have been in such temperatures and I can assure you that is hot weather. However, although FIFA awarded the 2022 World Cup tournament to Qatar back in 2011, it has only now become aware of the fact that there is hot weather in the summer months in Qatar. Even if the stadiums are air conditioned, how are you going to walk to them in that heat? To say that FIFA was unaware that it gets hot in the summer in Qatar seems disingenuous at best.

But the Qatar winning bid is not the only thing that FIFA has to worry about these days. In a stunning two-part series in the NYT over the weekend, entitled “*Fixed Soccer Matches Cast Shadow Over World Cup*”, reporters Declan Hill and Jeré Longman detailed an extensive corruption scheme where referees were bribed to influence the outcome of certain pre-2010 World Cup ‘friendly’ or exhibition matches in South Africa. It is the role of the host country to designate referees for such friendlies and apparently through corruption a betting syndicate took over this role. The reporters had reviewed an internal FIFA report that found “It provides extensive details of the clever and brazen ways that fixers apparently manipulated “at least five matches and possibly more” in South Africa ahead of the last World Cup. As many as 15 matches were targets, including a game between the United States and Australia, according to interviews and emails printed in the FIFA report.”

All of these allegations make clear the need for vigilance in all levels of international sporting groups.

### **3. *In Due Diligence and World Cup Bids: Follow the Money***

For those watching the 2104 World Cup, this year's tournament has certainly been spectacular, from the US reaching the round of 16, the incredible goals scored by Robbie Van Persie and Tim Cahill, to yesterday's heartbreak for Mexico, who led until the 88th minute, only to be tied and then loose in stoppage time to the Netherlands, this year's event has been one for the ages. However one very large shadow hangs over the sport's governing body, FIFA and allegations of corruption in its award of the 2022 World Cup to Qatar.

There were reports as far back as 2011 that Mohamed bin Hammam, offered bribes to members of the Caribbean Football Union (CFU) at a meeting organized by the Fifa vice-president, Jack Warner. As reported by The Guardian, in a 2011 article, entitled "*Fifa in crisis after claims against Jack Warner and Mohamed bin Hammam*", Owen Gibson reported, "nine of Fifa's 24 executive committee members have been accused of corruption in recent months." But these 2011 reports have paled in comparison to the reports detailed in the past few months regarding allegations of corruptions concerning the award of the 2022 tournament to Qatar.

In May, The Sunday Times rocked the sporting world with its article "*Plot to Buy the World Cup*" by Jonathan Calvert and Heidi Blake. In the article, they reported that a number of football officials took £3m in return for support of the Qatari bid. This initial account has been supplemented by additional reports detailing these allegations. In another article in The Guardian, entitled "*Mohamed bin Hammam accused of payments to help Qatar World Cup bid*", Agence France-Presse wrote that "Bin Hammam also paid \$1.6m into bank accounts controlled by the Trinidadian Jack Warner, also a former vice-president of Fifa, \$450,000 of which was before the vote for the World Cup", citing the report in The Sunday Times. Both Qatar and bin Hammam have denied any improprieties in the award of the bid to Qatar.

But there were more reports of payments to those voting on the Qatar bid beyond Jack Warner. In a June 16th report in the online publication, República, entitled "*ANFA chief admits receiving money from Hammam*" it reported that Nepal Football Association (ANFA) President Ganesh Thapa had been promised \$800,000 from bin Hammam and had been paid \$115,000. It also reported that Thapa's son received \$100,000 from bin Hamman. Thapa was quoted as saying that the money was for a business deal, "It is right that I received \$115,000 but it was in connection with the business I have partnered with Hammam."

As reported by Roger Blitz, in a Financial Times (FT) article entitled "*Fifa faces quandary over World Cup in Qatar*", Sepp Blatter, Fifa President, has gone on record to say that awarding the 2022 World Cup to Qatar was "a mistake".

But as Mike Brown, Managing Director of Infortal might say that when you are performing due diligence, 'follow the money'. This is not only important in thinking about allegations of corruption in the award of the bid to Qatar but also in the overall context of FIFA and the World Cup. It has been estimated that over one-tenth of the world's population is watching this year's World Cup. In the US alone, the interest is so high its game against Portugal had more viewers

than Game 5 (the final game) of the recent NBA championship. This could well lead to billions for the television rights in 2022 alone. That means that advertisers and sponsors will be paying a pretty penny to be associated with World Cup 2022. Do you think some of the current sponsors, such as Adidas, Coca-Cola, Sony or Visa will want to be associated with such allegations of corruption or deaths of workers from such appalling working conditions?

There is a chorus growing to move the 2022 World Cup from Qatar to another country. Speaking with its usual grownup voice, the FT editorial board has called for a re-vote on the location of the 2022 World Cup tournament venue, in an article entitled “*Blow the whistle on Fifa, please*”, they said, “The case for rerunning the bid for the 2022 competition looks unassailable. Final judgment should await a pending report into the Qatar bid by Fifa’s top internal investigator. But a string of controversies – among them the health concerns over staging the competition in Qatar’s furnace-like climate – means a new venue is now needed.” But more than simply re-voting on the 2022 bid, the FT said, “Western governments and lawmakers should therefore bring their influence to bear. The US Congress could consider holding hearings to examine the relations between American multinationals and Fifa. US companies have to abide by stringent anti-corruption laws. Congress would be right to examine the implications of US companies doing business with a major international body that has such weak governance. Such public hearings might make corporate sponsors reconsider their stance.”

What are the lessons for the compliance practitioner? Sometimes you need to step back and look at the big overall picture. If a deal has come into your company that is particularly high reward, it generally means that it was high risk. You may want to do a more in-depth look at all aspects of the deal, from the business partners involved, to your internal gifts, travel and entertainment for your employees involved in securing the contract. Putting a second or even third set of eyes on something might well protect your company if something does not seem right, feel right or look right.

#### **4. *Another FIFA Compliance Failure - Referees at the World Cup***

Although the organization puts on arguably the greatest sporting event for professional athletes on the planet, the term ‘professionalism’ is probably not one you can associate with the FIFA. Unfortunately this lack of professionalism can and does impact this greatest sporting event, the quadrennial World Cup currently going on in Brazil. This is particularly true in the area of referees.

In an article in the WSJ, entitled “*The Problem with World Cup Referees*”, reporter Joshua Robinson explored that precise topic. There are several problems with FIFA’s approach to referees. The first is a conscious approach, which is designed not to put the most professional referees on the pitch. FIFA does select the most experienced or even the referees who show the best performance. Rather, “While the World Cup’s 32 teams must play their way into the tournament through a grueling two-year qualifying process, FIFA, the sport’s governing body,



pulls referees from more than 40 countries out of a sense of fairness to all of its member associations.” In other words, a person who has never even been to a World Cup, who referees local clubs in Tahiti, “is a pulled hamstring away from the biggest stage in the game. And it isn't just the alternates who lack experience. Among the 24 official referees are several who have never called games involving big-name teams and players.”

Steve Jaive, an ESPN refereeing analyst and a former NBA official, was quoted in the article as saying “I find it hard to believe that they wouldn't have the best soccer officials there.” Moreover, “some critics believe that World Cup games ought to use referees with experience ejecting superstars like Cristiano Ronaldo. David Elleray, a retired English Premier League (EPL) referee was quoted as follows “A referee from Brazil, Argentina, Italy, England, week in, week out, they are refereeing high-profile matches.”

To compound this race towards ineptitude, FIFA stubbornly refuses to enter the 21<sup>st</sup> Century and use the technology available to it to get the calls right. As noted by Robinson, “Perhaps befitting a sport founded in England, soccer is an officiating monarchy. Each game features a single referee whose calls can't be challenged on the field or—until this World Cup—assisted by goal-line technology. Although two linesmen run along the edge of the pitch raising flags to indicate offside and fouls, the referee is free to ignore those calls.” Anyone who remembers the 2010 World Cup and the absolutely pathetic level of competency by the referees will welcome even this modest advance.

Yet another problem that FIFA stubbornly refuses to address is the pay for referees. The last time FIFA publicly announced the compensation for referees at the World Cup was back in 2006 and then it was listed at \$38,000. That is an incredibly small amount of money for such an important role. The entire FIFA referee system has come under greater concern because of match-fixing allegations. In a two part series in the NYT; part 1 was entitled “*Fixed Soccer Matches Cast Shadow Over World Cup*” and part 2 was entitled “*Inside the Fixing: How a Gang Battered Soccer's Frail Integrity*”, reporters Declan Hill and Jeré Longman wrote about a NYT investigation of match fixing ahead of the last World Cup and provided an unusually detailed look at the ease with which professional gamblers can fix matches. The article reviewed an “internal, confidential report by FIFA, soccer's world governing body. FIFA's investigative report and related documents, which were obtained by The New York Times and have not been publicly released, raise serious questions about the vulnerability of the World Cup to match fixing.” The reporters noted that the FIFA “report found that the match-rigging syndicate and its referees infiltrated the upper reaches of global soccer in order to fix exhibition matches and exploit them for betting purposes. It provides extensive details of the clever and brazen ways that fixers apparently manipulated “at least five matches and possibly more” in South Africa ahead of the last World Cup. As many as 15 matches were targets, including a game between the United States and Australia, according to interviews and emails printed in the FIFA report.”

These NYT articles detailed how betting syndicates would target the national football associations that are charged with selecting and supplying the referees in international matches. The articles pointed out how the betting syndicates would find the weakest link in any security or compliance system and then exploit it. In the past World Cup it was both the South African football association that signed contracts allowing the betting syndicates to select the referees for games to actually bribery of referees themselves.

These problems were made more relevant on Monday with an article in The Telegraph, entitled “*Football match-fixing: Ghana deal casts cloud over World Cup finals in Brazil*”, in which reporters Claire Newell, Holly Watt and Ben Bryant detailed that the “Ghana Football Association calls in police after undercover investigation by The Telegraph and Channel Four’s Dispatches programme finds that the President of Ghana’s FA agreed for the team to play in international matches that others were prepared to rig.”

They wrote, “The president of the country’s football association then met the undercover reporter and investigator, along with Mr Forsythe and Mr Nketiah, and agreed a contract which would see the team play in the rigged matches, in return for payment. The contract stated that it would cost \$170,000 (£100,000) for each match organised by the fixers involving the Ghanaian team, and would allow a bogus investment firm to appoint match officials, in breach of Fifa rules. “You [the company] will always have to come to us and say how you want it to go...the result,” said Mr Forsythe. “That’s why we will get the officials that we have greased their palms, so they will do it. If we bring in our own officials to do the match... You’re making your money. You have to give them [the referees] something... they are going to do a lot of work for you, so you have to give them something,” said Mr Nketiah, who is also the chief executive of the Ghanaian football club Berekum Chelsea and sits on the management committee of the Ghana U20 national team.”

In a meeting prior to the 2014 World Cup, when Ghana was playing warm-up matches in the US, Forsythe and Nketiah introduced the undercover team to Kwesi Nyantakyi, the president of the Ghana FA. In a meeting in “Florida, the president agreed to a contract that stated each match would cost the investment company \$170,000 and that they could appoint the match officials for each game. A contract was drawn up that specified that “The Company will appoint and pay for the cost of the referees/match officials in consultation with an agreed Fifa Member association(s),” in direct breach of the rules that prohibit third parties from appointing officials, in order to protect their impartiality. During the meeting, the president suggested that the fictional investment company put on two matches after the World Cup to prove that they were able to organise games.”

What are the lessons for the compliance practitioner? I think two jump out from the examples from the world of FIFA. The first is to assess your risk. Clearly the style FIFA is using to manage the quality of its referee corp is less than acceptable. FIFA must provide clear evidence that the best quality of refereeing is on the field, together with the best players in the world. Further, technology should be employed to make sure it is the athletes who decide the outcome

of a game, not some blown call. FIFA should ensure that ‘getting it right’ is what officiating is and not idiotic calls that any third-grader could see were incorrect.

But the second problem seems to me to be even greater. The system itself either lends itself to corruption or makes itself more susceptible to corruption. If a company has a sales structure that does not allow for proper oversight or even transparency, then the sales structure should be changed to allow such oversight. The money generated by the sport of soccer worldwide makes clear that professionalism must be brought to the referee ranks. If FIFA pays some paltry sum for men who hold the game literally in their hands, it needs to ensure that they can resist a bribe to fix matches.

### **5. *How A Failure to Set Tone-at-the-Top Led to a Fractured Vertebra***

What does ‘Tone-at-the-Top’ mean to any anti-bribery or anti-corruption program? Conversely, what if management says to do the right thing but only judges employees on their sales; what is the message that only ‘Talking The Talk’ sends; if a company fails to ‘Walk-the-Walk’ of doing business in compliance with anti-corruption laws such as the FCPA? Finally, how long does it take for the dissonance of telling people do to the right thing without training, communicating and then following up with them? Unfortunately these questions were answered in a very real and very ugly way in last week’s World Cup quarterfinal match between Brazil and Colombia.

For those of you who did not watch the match, Brazil lost its top player, Neymar, to a fractured vertebra, after Colombian player Juan Camilo Zúñiga kned him in the back. As reported in the NYT, in an article entitled “*Brazil Takes a Painful Step Forward*”, Andrew Keh wrote “With about five minutes left to play, the Colombian defender Juan Camilo Zúñiga went airborne on a loose ball and ended up driving his knee into the lower back of Neymar, who immediately crumpled to the turf in pain. Neymar’s teammates could be seen signaling to the bench for a substitution as a stretcher was brought onto to the field. He was taken to a nearby hospital, where a crowd of fans soon formed.” After the match was completed, “the team doctor Rodrigo Lasmar said that Neymar had sustained a fractured vertebra in his lower back. Lasmar said the injury would not require surgery, but would take three to four weeks to heal. It was a huge blow to the team, the country and the tournament. Neymar, 22, who plays for Barcelona, has had his face plastered on billboards and shown in television commercials since well before the tournament. For such a young player, he was shouldering a huge amount of responsibility.”

But this hard foul did not come out of nowhere nor did it appear that the Colombian team had targeted Brazil’s star player. This hard foul was a direct result of the failure of referee to set the proper tone against hard fouls throughout the match. Keh wrote, “There were 54 fouls called in the game, the highest total of any match in the tournament. Scolari [the Brazilian coach] acknowledged that both teams probably played with too much physicality, but he said the referee, Velasco Carballo, did not do enough to control the tenor of the game.” The Colombian

coach was also critical of the referee and was quoted as saying, “We lost fluidity to the game because of that friction and intensity.”

Sam Borden, in another NYT article entitled “*For Bellicose Brazil, Payback Carries Heavy Price: Loss of Neymar*”, seemed to believe that it was Brazil and its tactics which may have reaped what they had sown with hard fouls against Colombian players. Nevertheless, “Soccer referees will often show yellow cards to players for “persistent infringement” of the rules, a phrase that generally means committing three or four serious fouls. Fernandinho [Brazilian midfielder] was called for four fouls in just the first half of the game, three of them significant hacks at Rodríguez. But Velasco Carballo gave him no penalty.”

After halftime, the referee still did not take control of the game. Borden wrote, “It was in the 57th minute, though, when the match began to boil over. The Colombians had continued to mostly sit back and take the punishment, but they were clearly infuriated when Silva crushed Ramos from behind as he went toward a ball. Velasco Carballo, again, declined to whistle a foul. The Colombians’ ire was raised even more 10 minutes later when the referee showed a yellow card to Rodríguez — who was apoplectic at the decision — for an innocuous trip that was, as Rodríguez vociferously pointed out with multiple hand gestures, a first offense compared with Fernandinho’s harrying.”

Borden leveled his most direct criticism at Carballo when he wrote the following “Velasco Carballo’s role in the ugliness cannot be minimized. A Spaniard, he is known as a high-level official, but it seemed clear that he was determined to avoid using cards to control the players. That decision backfired, particularly as it related to Fernandinho; instead of giving the players a comfort level to play more freely early on, his lenience served as an elastic band on the game, encouraging the players, especially the Brazilians, to try to see just how much contact they could get away with on Rodríguez without being punished. It was a poor miscalculation from Velasco Carballo, and one he compounded by neglecting to adjust as the game progressed. His culpability is impossible to ignore.”

Rarely do you see such a course of action or perhaps more aptly put, failure to engage in a course of action, as leading to such a catastrophic result. In any competitive match, for almost any sport, it is up to the referee to keep things from getting out of control. If they start to get too physical and play outside the rules, then it is the job of the referee to enforce penalties against the offending party or parties. Of the 54 fouls called against Brazil in its match with Colombia, 31 were against the host nation. It was only a matter of time before things got out of hand. If players are told by a referee’s action that there will be no sanctions for hard fouls that cross over the line, they will certainly get that message.

For the compliance practitioner, I do not think the lesson learned could be any clearer. Companies which continue to reward, through promotion and compensation, high producing sales people, while turning a blind eye towards their sales techniques which may be in violation

of company policy or even the FCPA; will communicate that playing by the rules is not in your interest if you want to get ahead in this company. Correspondingly, if a company's first action when an anonymous whistleblower raises an allegation is to try and find out the identity of the whistleblower, that also sends a strong message that the company will get you, one way or another.

For Brazil, the loss of its star player can certainly not help its chances going forward. For the rest of us, we will lose the sight of seeing one of the world's greatest footballers on its greatest stage. And let's not forget Neymar, who is the one with the fractured back.

## **6. *Lessons from a Soccer Manager for the Compliance Practitioner***

Compliance leadership can take many forms and inspiration can come from many different sources. I was reminded of this when I read an article FT, entitled "*How I coach Ronaldo and other secrets*", by Simon Kuper who wrote the piece based upon his interview of Real Madrid manager, Carlo Ancelotti.

Ancelotti grew up professionally playing in Italy's Seria A, the top league in that soccer-crazed country. So he brings a player perspective to his job. He also rose in the soccer coaching ranks, with stops at Juventus and AC Milan in Italy; then Chelsea in England; followed by Paris Saint-Germain in France before taking over the reins at Real Madrid in Spain. So he has been both a practitioner and an executive. I found some of his thoughts on coaching very insightful for the compliance practitioner.

### *Coaching a Multi-National Team - Translating Your Compliance Program into Native Languages*

While at AC Milan, Ancelotti coached a wide number of different nationalities so being able to communicate with them was critical. This was important when coaching in Italy but Ancelotti found it much more difficult when he moved to England to take over as the manager for Chelsea. He said the hardest part of the communication piece was how "to show emotion". As any compliance practitioner for an international business concern recognizes, communicating in a multiplicity of languages is a paramount skill.

This is an area that is receiving increasing attention from the DOJ as a component of a best practices compliance program. In the FCPA Guidance, under the Ten Hallmarks of an Effective Compliance Program, it intones that a company's Code of Conduct and its compliance policies need to be clear and concise. However, equally noted is that the FCPA Guidance makes clear that if a company has a large employee base that is not fluent in English such documents need to be translated into the native language of those employees.

### *Trusting Your Players - Getting Buy-In For Your Compliance Program*

While managing Chelsea, before the 2010 FC Cup final against Portsmouth, “Ancelotti did something unusual: after naming the starting 11, he asked them to decide the match strategy themselves.” He recalls: “Everyone said one thing. For example, [goalkeeper Petr] Cech said, ‘You have to control the space behind, to avoid the counter-attack.’ That season we played 60 games, and 60 times I made the strategy. So I think the players understood very well what they had to do.” When asked why he would try something so risky before such an important match, Ancelotti responded, “I was sure the players followed the strategy, because they made the strategy. Sometimes I make the strategy, but you don’t know if the players really understand.” His tactic worked and Chelsea beat Portsmouth 1-0 to complete the rare double of winning the English Premier League and the FA Cup.

What Ancelotti had hit upon was engaging his players. You should view every interaction as an opportunity to tap into the expertise of your workforce. This requires you to let employees say what they think. One of the first (and most insistent) questions you will face as a compliance practitioner is explaining how and why the Foreign Corrupt Practices Act (FCPA) applies to a country and culture far from the United States. Another related question is often along the lines of the endemic corruption in a country and how the business unit personnel cannot do business any other way. Let your co-workers express these thought and sentiments and then explain why the law(s) applies and how they can do business going forward. The business unit will usually have a solution to these problems and if you can get them to engage with you, it may well be a solution for you and the company. My experience is that they will generally have the correct response for you, even if they do not understand the nuances of the FCPA, UK Bribery Act or other anti-corruption law. But if you can have the employees understand that it is there program, you will have greater buy-in and greater participation in your compliance regime.

#### *Managing from the Ground Up - Thoughts on Building a Compliance Program*

After his stint at Chelsea, Ancelotti moved on to Paris Saint-Germain in France. Here he found a different set of challenges. The first was dedication to the program and lack of professionalism. As Ancelotti explained, “The problem of the English player – sometimes it’s difficult for them to understand that they don’t have to work 100 per cent in training. There are some training sessions where it’s important not to work 100 per cent. The French don’t understand why they have to work 100 per cent every day.” This attitude was acerbated by factionalism; the team was made up of ethnic factions. Ancelotti said, “We had the South Americans, the French, the Italians,” and “The relationship is not easy. The South Americans like to play with each other. The Italians the same. The players were not used to having a winning mentality.” Simply put, he had to change the attitude of the players.

How can you begin this process in a compliance regime? Writing in the Harvard Business Review (HBR) authors Linda Hill and Kent Linebeck, in an article entitled “Are You A Good Boss or a Great One”, said that leadership had three imperatives, which are to (1) Manage

Yourself; (2) Manage Your Network; and (3) Manage Your Team. These three imperatives provide a good framework for the compliance practitioner.

Most employees ask the question “Can I trust this person?” Leadership results, in large part, by the answer to this question. Trust has two components; the first is that the leader has confidence in his or her own competence; and the second is that employees have trust in the manager’s character. This means that your motives are good and that you want people to do well. If these characteristics are present a manager should be able to influence others.

Next building key relationships throughout an organization leads to the road for success. This means nurturing a broad network of company employees who can influence specific areas and the departments within a company. As scarce resources must be reckoned with on any project, the person who can show the interdependence of seemingly disparate groups, which may have conflicting goals and priorities, is the manager who achieves the most. This relationship building can be a key way to influence others within an organization over which a manager does not have direct control.

Lastly, managing a team is a different dynamic than managing one-on-one. If a manager can influence a team, they have a greater chance of success as employees tend to be more creative and productive when working in groups. Accountability to other team members and a genuine conviction that they are all in it together can lead to a group coalescing into a team. The culture of any team is important: values, standards and norms guide employees in what is expected of them. Attention must be paid to all team members and recognition for individual efforts within the team can bring greater effectiveness as well.

To be a great compliance leader, the compliance professional must use all of these techniques. To achieve many compliance goals within a company requires a manager to exert a great amount of influence. The techniques set out by the authors provide direct tools for the compliance professional to utilize in this task. Managing employees within any compliance department is the first step. A compliance professional must reach out across an organization to all groups and departments to develop relationships, which can be used in furthering a company’s compliance goals. A compelling team creates the foundation of this strong network and a strong network will allow your compliance team a path to achieve its goals within the company. But knowing where you are going is only half of the journey. The authors end with the admonition that “you need to know at all times where you are on the journey and what you must do to make progress.”

Obviously Ancelotti has been successful at many different stops in his career. Some of the tips that Kuper wrote about in this article can be useful for the compliance practitioner dealing with a diverse multi-national employee base.

## 7. *World Cup Finale - Compliance Lessons to be learned from Success and Failure*

The 2014 championship is over and Germany came through this year's tournament as the clear victors. Over the past couple of weeks, I was lucky enough to see two performances of the current Queen/Adam Lambert Tour. They ended both concerts with *We Are the Champions* and I could not but help think of the German soccer team and indeed the entire German country, winning its first World Cup title since unification. And, of course, any discussion of Germany, its title and this year's World Cup will have to include is absolute destruction of the Brazilian team and the hearts of the host country with its 7-1 uber-win in the Semi-Finals. How long will that game be remembered? My guess is as long as soccer is played.

While Argentina did have its shots at Germany in the finals, in order to win they were required to play a near perfect game, which, unfortunately for the team and the country, it failed to do in the finals. Does this mean that Messi is not the greatest player in the game today? I really do not know but I still love watching him play and that is good enough for me.

From all of this, the lessons for the compliance practitioner can be many but I wanted to focus on two leadership lessons: What can you learn from failure? and What can your learn from success? Losing first. In an article in this week's issue of Sports Illustrated, entitled "*And Then There was Ein*", Grant Wahl wrote about how Germany turned its national soccer program around from one of its most devastating performances in Euro 2000 where it finished last in its group and did not win a single match in the tournament. From that nadir, "the national federation teamed up with German clubs to overhaul the country's youth development." Players from this development program were instrumental in leading the 2014 German team to the 2014 World Cup win. In other words, the German soccer federation learned from its past mistakes and grew a team that became champions.

Contrast this lesson with Wahl's take on Brazil. He quoted Alex Bellos who said the following, "What does it mean to be the five-time champion if you let in four goals in six minutes?... The world's biggest footballing country hosting a World Cup, in front of their own fans, and were made to look like they couldn't play football. And against a team that was playing with artistry and sophistication and happiness, all the thing that Brazil is supposed to play with. You couldn't have devised a more devastating epitaph for the Beautiful Game." Bellos went on to say, "Brazil's week from hell revealed a nation satisfied with resting on past soccer achievements and unwilling to seek new ideas abroad."

Just as lessons can be learned from failure they can also be learned from success. In this week's Corner Office section in the NYT, Adam Bryant profiled Kat Cole, the President of Cinnabon, in an article entitled "*Questioning Success More Than Failure*". While thinking about Germany's success in the World Cup I was intrigued when Bryant quoted Cole for the following, "I've learned to question success a lot more than failure. I'll ask more questions when sales are up than I do when they're down. I ask more questions when things seem to be moving smoothly, because



I'm thinking: "There's got to be something I don't know. There's always something." This approach means that people don't feel beat up for failing, but they should feel very concerned if they don't understand why they're successful. I made mistakes over the years that taught me to ask those questions."

Both of these perspectives can be very useful for the FCPA or UK Bribery Act compliance practitioner. Just as it is axiom that your compliance program should not be static but dynamic and evolving, what are you learning from your compliance failures and compliance successes? Most lawyers and compliance practitioners can review root cause/analyses to help determine how a compliance failure might have arisen. But how many are looking at your compliance successes. By this I do not mean celebrating your compliance successes but performing the same type of root cause/analyses to determine how a fact pattern arose but was prevented from becoming a full-blown FCPA violation. If something came in through the hotline, did you interview the whistleblower about what caused them to have confidence to report in that manner? Did you look at the training delivered to the whistleblowing employee? How about their supervisor? Did you interview that supervisor to see how he or she got the message out to not only use the hotline but stress the message of no retaliation?

In her interview Cole put it another way when she said, "I learned to make sure I take the full authority of my role. When I haven't, I knew it immediately. And so I keep a keen eye out for whether my young leaders are forgoing an opportunity to lead. Their intentions might be right but the action and outcome are wrong. I remind people that they were hired for their point of view: "I want 100 percent of your brain 100 percent of the time, and there is a respectful way to communicate and disagree. Please do not hold back, because I want 100 percent of my investment in you.""

For the compliance practitioner, I found Cole's insights useful in other areas. Although given in the context of ambitious employees who might want to succeed at Cinnabon, I found them to be useful in compliance as well. "First, I talk about being incredibly coachable, because we all give each other feedback. If you want to move up, you've got to get as many inputs as possible to continue to develop. Second, take your development into your own hands and be curious about the entire company. If there's something you want to learn, go learn it. The structure here is like a start-up. Then I talk about productive achievers and destructive achievers, and that I only promote and support productive achievers. And that's about mentoring and helping others while you are delivering results.

Germany is the new king of the soccer world. Long live the King, at least until the next World Cup. The lessons that Germany took to heart in the wake of its disaster in Euro 2000 directly led to it hoisting the trophy this year. Conversely, Brazil rested on its considerable laurels and now must live with the ignominy of a 7-1 shellacking, probably for the rest of the country's collective memory. For a compliance program to be effective it must evolve. As Wahl's Sports Illustrated article makes clear, lessons can be learned and evolution made from failure. However, as

Bryant's Corner Office article interview of Cole makes clear as well, lessons can be learned from successes as well.

Perhaps that is the final lesson from the 2014 World Cup...