

THE FIFA SCANDAL: THE LONG FOOT OF AMERICAN JUSTICE

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Envelopes of cash. Vote rigging. Wiretapped recordings in 5-star hotel rooms. A dramatic early morning police raid coordinated between the FBI and Swiss law enforcement. An episode of the Sopranos? No, but it is a day in the life of FIFA.

Last week's revelation of widespread corruption in the world of international soccer was shocking on many levels, but it should serve as a stark reminder to those engaged in international business that the U.S. government will prosecute crimes that occur largely outside the United States and will build a case over decades to do it.

The U.S. has always been a proponent of extraterritorial jurisdiction: that its laws apply to actions well outside the U.S. as long as there is some nexus to the U.S. The charges against FIFA officials are just the latest in a growing trend.

Those involved in international businesses should take heed: the U.S. economy has the global reach to touch almost any business transaction anywhere in the world and U.S. regulators believe they have the moral authority to penalize those who violate the law.

Particularly worrisome to non-U.S. businesses that think they are acting appropriately or in line with their national laws is that they often do not know they are violating U.S. laws or subject to U.S. jurisdiction. Non-U.S. businesses that touch the U.S. in some way should conduct a thorough review and update their policies and procedures to ensure compliance with relevant U.S. regulations.

As applied to non-U.S. businesses, these so-called "long arm" statutes implicate how business is done, how money moves, and how assets are handles. For example, in 2008, using its listing on U.S. stock exchanges as a basis, the U.S. charged Germany-based Siemens for violating the Foreign Corrupt Practices Act as a result of bribes it paid to officials in China, Russia, Vietnam, Nigeria, and elsewhere. Similarly, the U.S. will prosecute banks anywhere in the world that fail to comply with U.S. tax, sanctions, and anti-money laundering regulations, such as Luxembourg-based Clearstream, which pled guilty in 2014 for violating U.S. sanctions on Iran.

The U.S. tax and financial system, in particular, provides one of the greatest hooks for U.S. jurisdiction.



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It is incredibly challenging to avoid intersecting with the U.S. financial system in carrying out business anywhere in the world. Using U.S. dollars as part of the transaction can often trigger U.S. jurisdiction no matter where the parties are located. Moreover, the U.S. regularly uses tax evasion charges to punish criminals for larger crimes it is unable to prove with the available evidence. Famously, in 1931, Al Capone was convicted of tax evasion, not being a mob boss, and this has become a favorite trick of U.S. law enforcement ever since.

Drawing from this example, the U.S. did not charge the allegedly corrupt FIFA officials with bribery or corruption. These officials were charged wire fraud, which makes it illegal to use the U.S. financial system to facilitate other illegal activity. The charges also relate to tax fraud, money laundering, racketeering, and violation of the Travel Act, a statute

that punishes, among other things, using the United States to facilitate bribery. In other words, because the bribery payments were routed through the U.S., conspiratorial meetings happened on U.S. soil, and certain individuals did not pay taxes on their illegally obtained income, FIFA officials sitting in Switzerland and managing a sport most Americans do not care about, will now be facing justice in a court in Brooklyn, NY.

In America's view of its role as a global super power, it sees a need to plug holes in the global justice system, doing something necessary that no international organization, country, or NGO can do. Moreover, it believes these cases hurt Americans playing by the rules. If Americans who do not pay bribes are losing contracts—or the opportunity to host the World Cup—to foreign competitors that do, the U.S. wants to level the playing field.

While many say American power does not do enough or does too much, the soccer fans I encounter every day in London tell me going after FIFA was just right—America stepped in to do something no one else could to protect a game loved by billions.

Spurred on by this success, expect more American law enforcement action abroad, not less.