

Compliance Alert

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Corruption Risk and the 2014 World Cup: Scoring with Strong Hospitality Compliance

By John P. Cunningham and Geoff Martin, Washington D.C.

The World Cup kicked off in Brazil this month. Tickets for the quadrennial month-long soccer tournament, currently ongoing in various cities throughout the country, sold out months ago. The tournament has been criticized by some in Brazil due to a perception that the event is reserved for the elite, with ordinary Brazilians being priced out of attendance. This perception, whether accurate or not, seems to be primarily directed at the provision of corporate hospitality, where the cost of single match tickets can run into the tens of thousands of dollars.

Corporate hospitality at the World Cup and other high-profile global events can provide a *bona fide* relationship-building opportunity for companies. Nevertheless, such events are also a reminder of the risk that, when handled improperly, corporate hospitality can result in bribery or related improprieties. In this article, we examine where companies should draw the line, what can be done to manage and mitigate the risks, and the importance of properly recording expenses associated with corporate hospitality.

Hospitality and Anti-Corruption Laws

We consider briefly here the relevant provisions and guidance under the U.S. Foreign Corrupt Practices Act ("FCPA") and the U.K. Bribery Act ("Bribery Act"). Depending on the global footprint of a company and the location of the proposed hospitality, other anti-corruption regimes may also apply. Importantly, in Brazil, account must be taken of the new Clean Company Act (Law No. 12.846/2013), which came into force earlier this year. (Our colleagues in Sao Paulo have released a timely client alert on the guidance issued under the Brazil Act relating to the acceptance of World Cup tickets by Brazilian federal government employees. That alert can be found [here](#).)

Both the U.S. and the U.K. regimes recognize that corporate hospitality can be a legitimate business development tool, unrelated to corruption. But both also caution that hospitality can constitute bribery when lavish and conducted with a corrupt intent. For present purposes, the key difference between the two laws is that, while the FCPA applies only to government officials abroad (outside the U.S.), the Bribery Act regulates public and private (commercial) bribery, whether domestic (in the U.K.) or abroad.

What the FCPA Says about Corporate Hospitality

For hospitality to constitute a bribe under the FCPA, the giver must have corrupt intent. According to the Resource Guide to the FCPA, released jointly in 2012 by the U.S. Department of Justice and the Securities and Exchange Commission (“Resource Guide”), this requirement “protects companies that engage in the ordinary and legitimate promotion of their businesses while targeting conduct that seeks to improperly induce officials into misusing their positions.”

Indeed, the Resource Guide states that it is unlikely that the provision of a cup of coffee, taxi fare, or nominal company promotional item, for example, would “ever evidence corrupt intent.” As a result, small gift expenditures are rarely pursued by U.S. regulators except where they are part of an extended or aggregate pattern of conduct indicating an arrangement to corruptly influence foreign officials to obtain (or retain) business. In contrast, the Resource Guide indicates that lavish gifts and/or entertainment expenses are “more likely” to indicate an improper purpose and, thus, create potential FCPA liability.

What the U.K. Bribery Act Says about Corporate Hospitality

Similarly, under the U.K. Bribery Act, in order for hospitality to constitute a bribe, the giver must intend for the hospitality to bring about the improper performance of a duty by the recipient, or to reward such improper performance.

The U.K. Ministry of Justice Guidance (“Guidance”), which supplements the Bribery Act, makes clear the intention of this provision with respect to hospitality:

“Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. . . . It is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes.”

The Guidance goes on to state that the more lavish the hospitality then, generally, the greater the inference that it is intended to influence the recipient.

A Note on Valuing Hospitality

No matter which anti-corruption regime you are functioning under, when considering the cost and potential lavishness of hospitality, it is important to take into account not only the face value of the ticket, but also any associated value. For example, because of the demand for, and elusiveness of, World Cup tickets in Brazil, the opportunity to attend a match itself (regardless of the ticket price) can be seen as having a substantial value attached to it. This “intrinsic” value of the World Cup experience, as arranged by an individual or company seeking to entertain a client, may be considered along with the actual price of the ticket (and any related offerings) when assessing the extravagance of the hospitality.

Mitigating Hospitality Compliance Risks

The sensitivity of hospitality, particularly around high-value and high-profile events such as the World Cup, dictates that companies should take care to implement robust policies and procedures around corporate entertainment, and adequately train employees about what is considered acceptable under the relevant anti-

corruption regime(s). Strong hospitality programs should include (among other safeguards):

- A mechanism for determining whether invitees are public officials;
- Independent compliance review, oversight, and approval of the proposed hospitality;
- Identification of red flags that might make the hospitality impermissible, such as:
 - where the invitee is a key decision maker in the award of work to the host company;
 - where there is an ongoing tender process; or
 - where the invitee has requested the hospitality.
- Guidance on permissible spend for hospitality (e.g., by setting per-country approval thresholds);
- Consideration of the lavishness of the specific event and whether the invitee has received other hospitality in a given year – recurring hospitality to a single client during the course of a set time period may, for example, be perceived as lavish, regardless of the extravagance of any one event;
- Assessment of local laws, rules, and restrictions, in addition to the global approach;
- Provision, as necessary, for attendees to provide an ethics certification confirming that their acceptance of the hospitality is in line with their employer’s policies and local law;
- Employment of mechanisms to ensure that employees can only be reimbursed for hospitality expenses following appropriate pre-approval protocols; and
- Robust accounting provisions to ensure that hospitality expenses are promptly, accurately, and otherwise properly recorded in the company’s books and records.

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