Review of the Foreign Corrupt Practices Act and its Impact on the Olympic Games

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Legal aspects

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The Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1495 (United States) [FCPA] governs how US corporations conduct business in other countries. Among its provisions, the FCPA criminalizes US corporations and its citizens from bribing foreign officials. The bribes can be monetary or involve benefits given to foreign officials for the purpose of obtaining business contracts. Many sponsorship activation tactics, such as those that support Olympic sponsorships, may implicate the FCPA as well as host country anti-bribery laws. Corporate hospitality is a tactic used by many sport sponsors in order to create business opportunities. However, there are numerous activities, such as tickets to events, entertainment, and travel accommodations, within a traditional corporate hospitality program that may violate the FCPA. This paper will address the use of corporate hospitality and its potential violation of anti-bribery laws at the Beijing, Vancouver, London and Sochi Olympic Games.

Most Olympic host countries have anti-bribery laws. In 2008, the Summer Olympic Games were held in Beijing, China and the Anti-Unfair Competition Law of 1993, (PRC Criminal Law Art. 163) (China) prohibits gifts to others in order to secure business. However, the business culture within China has encouraged gifts to secure business relationships. Recently, China increased enforcement of Corruption of State Officials (PRC Criminal Law Arts. 389-95) (China), the internal anti-bribery laws of China. Because most businesses within China are at least partially owned by the government, the employees of those businesses are considered foreign officials within the meaning of FCPA. Thus, even minor gifts from a corporate hospitality program may engage both US and China law.

The 2010 Winter Games were held in Vancouver, Canada. Canada has anti-bribery laws governing corporate and individual behavior within and outside its borders. Similar to the FCPA, Canada created the Corruption of Foreign Public Officials Act of 1998, (SC 1998, c 34) (Canada). This legislation criminalizes Canadian corporate behavior in other countries. Further, the Canadian Criminal Code contains Bribery, (R.S., 1985, c. C-49, s. 119-125) (Canada) that forbids the bribing of public officials within Canada.

The 2012 Summer Games were held in London, England. The English anti-bribery law commonly known as “The Bribery Act” was strengthened about a year prior to the Games. The Bribery Act of 2010, c. 23 (United Kingdom) prohibits bribing UK officials, being bribed, and bribing foreign officials. Although written in a very strict manner, the enforcement of the law allows for reasonable hospitality associated with sport sponsorship.

Finally, the 2014 Winter Olympic Games are being held in Sochi, Russia. Russia enacted the Obligation of Organizations to Undertake Anti-Corruption Measures in January of 2013, (Article 13.3, FL 273) (Russia) as an anti-bribery law, but it also has a culture of gift giving in exchange for business opportunities. This culture may create issues with the FCPA and the Russian anti-corruption law.

In addition to a gift-giving culture, many countries have a business community that commonly requires bribery and corruption in order to secure a commercial advantage. The Bribe Payers Index [BPI] rank Russia and China as the highest two countries where firms engage in bribes both within their own country and abroad (Transparency International, 2011) and the Corruption Perceptions Index [CPI] lists them amongst the most corrupt public sectors (Transparency International, 2012). This real-world requirement creates a tension against both the FCPA and the local anti-bribery laws.

This presentation will: (1) analyze the Foreign Corrupt Practices Act; (2) discuss the past four Olympic countries’ anti-bribery laws, their gift-giving and bribery business culture; and, (3) offer recommendations for sport marketers to comply with the FCPA and local anti-bribery laws.