

FIFA scandal: Has the industry been caught off side?

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The bribery scandal

The indictment of 14 defendants associated with Fédération Internationale de Football Association ("FIFA"), the Swiss body responsible for regulating and promoting football worldwide, and other related organisations, has dominated recent headlines.

Bulk cash smuggling, secret off-shore bank accounts and the creation of shell companies in tax havens are just some of the allegations contained within the recent indictments issued by the US Department of Justice. The FIFA officials themselves, however, have not been charged with bribery; as recipients of the alleged improper payments, the US anti-bribery legalisation does not apply to them.

The core misconduct allegations against the FIFA officials include racketeering, wire fraud and money laundering conspiracies arising out of the alleged bribes and kickbacks received by them from a variety of sources, including athletic clothing and sports-marketing companies.

Given the publicity this scandal continues to attract, it is difficult to see how these businesses, as payors of the alleged bribes, will escape formal investigation. They may also be forced to defend bribery and corruption type charges. As these payments were allegedly made in several continents including North America, South America, Europe, Asia and Africa, the US authorities may try to pursue such corruption claims globally, testing the extent to which US law applies.

Banks and other financial companies are also being drawn into this scandal as it unfolds. The indictment alleges that they have helped to launder the cash associated with the payments and actively concealed the fraudulent schemes.

Further, FIFA's global accounting and auditing firm is also being publicly criticised for failing to detect and report these alleged criminal activities. Other accountants and auditors may face similar criticism as the investigation widens.

Implications for insurers

The industry's cost of responding to official inquiries and criminal prosecutions could be staggering. Companies will need to carefully review their insurance policies to establish if sufficient cover is available. One of the most obvious sources will be the D&O policy. The implications for D&O insurers will differ depending on the insured entity/person.

Although it will turn on actual policy wording, for the FIFA officials who have been indicted, defence costs cover is likely to be available as a criminal prosecution will typically fall within the definition of a "claim". However, as many of the defendants are also directors of other companies, issues of outside directorship cover and dual insurance will need to be reconciled.

Given the nature of the allegations, insurers may also be able to rely on fraud or dishonesty type exclusions, although this is unlikely to be available until a final adjudication of the underlying claim. In the meantime, insurers will be obliged to advance defence costs unless avoidance arguments exist.

These defence costs will be significant if 14 separate legal teams are appointed due to conflict of interest issues. Insurers will no doubt have in mind a desire for the defence teams to work together as far as possible on common issues to achieve economies of scale.

For the other companies implicated in this scandal, the initial concern will be investigation costs. Whether these attract cover may depend on:

- The entity/individual who is under investigation;
- The definition of "claim" in the policy; and
- The scope of any cover by an investigation costs extension. FI, PI and D&O Insurers may all face exposures in this regard.

Conclusion

The individual insureds and their companies already facing criminal prosecutions and investigations will no doubt submit wide notifications across the entire insurance programme in an attempt to capture any subsequent civil claims that may follow any adverse rulings.

Even without an investigation or prosecution, any prudent insured with tangential involvement in this matter may be considering with their brokers notifying "circumstances" now.

It is likely to be some time before the industry can assess the true costs of this alleged scandal. For now, as matters unfold, insurers should keep their eye firmly on the ball.

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