

Compliance remains a key protection for firms to avoid Olympics-related FCPA violations

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With the 2024 Olympics kicking off later this month in Paris, companies should be aware of potential heightened risk and scrutiny around hospitality events related to the Games.

Background

The Paris 2024 Olympics begin on July 26th, 2024. The Olympics are an opportune time for businesses to engage in corporate hospitality, with relationship-building opportunities that come with the unique international affair. With this unique opportunity comes heightened risk that corporate hospitality will lead to scrutiny by government authorities.

DOJ and SEC have provided guidance, in the form of the FCPA Resource Guide, that hospitality—including sporting events—that constitutes a small component of a legitimate business trip is acceptable and appropriate. The same guidance makes clear that extravagant trips and events, with little or no business purpose, can violate the FCPA and lead to an enforcement action.

Leading up to this year's Olympics, French prosecutors are already engaged in at least four separate investigations under their new anti-corruption law, Sapin II, which was adopted in 2017 and requires companies to implement anti-corruption compliance programs to prevent bribery, favoritism, and extortion. Prosecutors are investigating potential wrongdoing by Olympics organizers and event management firms related to contracts signed in connection with the Olympics. These investigations harken back to corruption scandals that have marred past Olympics, including Salt Lake City in 2002 when bribes were paid to the International Olympics Committee members in order to secure the city's bid. In addition, authorities around the world are increasing their enforcement of foreign bribery laws, and DOJ is increasing efforts to identify cases through whistleblowers and data analytics.

Past hospitality corruption cases and France's current anti-corruption push serve as a reminder to companies and executives that activities related to the Olympics are potentially subject to heightened scrutiny. Below we will review several important guardrails for companies considering hospitality related to the Olympics.

Key compliance guardrails

Based on the hospitality-related enforcement actions, DOJ and SEC guidance, and the many foreign anti-corruption laws, there are a few key compliance guardrails that companies can follow as they plan and engage in events around the Olympic Games:

- As a preliminary matter:

- Review the existing code of conduct to ensure that it includes appropriate anti-bribery provisions and foundational principles that the company is committed to the highest standards of ethics and integrity.
 - Review the existing gifts, travel, hospitality, and entertainment policies to ensure they are appropriately tailored to the company's risk profile and client base, including the extent to which these policies apply to clients and third parties.
 - Reinforce that all employees have a responsibility to comply with the company's policies, including anti-corruption, and to report any concerns involving the operation of the policies, and that violations are subject to discipline up to and including termination.
- Ensure that there is a process in place for requesting and approving such gifts and events. This process should include documenting in writing the specific individuals who are being invited and the name(s) of their employer(s), the attendees from the company, the cost of the event, and the business purpose of the event.
 - Given the unique and potentially lavish opportunity that the Olympics present, companies may consider a heightened level of approval by Compliance and/or Legal (in advance of an offer) in connection with such hospitality beyond review and approval by a higher-level manager.
 - When calculating the cost, companies should consider using the face or market value of the ticket, not the cost to the company. For example, if the tickets were free to the company, this does not mean that government authorities will view the value to the official as \$0.
 - In calculating the costs, companies should consider factoring in all expenses, including travel, lodging, refreshments, and food, not just the ticket price. DOJ and SEC have included all such expenses in determining the true benefit to the official who receives the hospitality.
 - Ensure that the invitation to the customer/recipient is open and transparent, and that the event is recorded accurately in the company's books and records. Even where corruption does not occur, DOJ and SEC have brought cases based on a violation of the FCPA accounting provisions for failure to maintain accurate books and records and/or failure to implement reasonable internal accounting controls.
 - In determining whether to approve an event for a particular customer/recipient, the company should look at the spend on that customer over the course of the year. If the company has already taken the customer to a number of dinners and, in total, has spent a considerable amount of money on that customer, it is likely that government authorities will view the Olympics-related hospitality in that broader context.
 - Likewise, the company should consider the timing of the invitation and event as they relate to particular business decisions or opportunities involving the recipient's employer, as DOJ and SEC, as well as other government authorities, may also look to this broader context as one factor in their analysis.
 - Ensure that the business discussions and/or meetings surrounding the hospitality are well documented so that, if there is any future scrutiny, you can demonstrate to government authorities the legitimate business purpose of the trip and hospitality.
 - Consider maintaining approval documentation related to these policies and events as various government authorities, including DOJ and SEC, have increasingly sought to review compliance-related documentation as part of their evaluation of companies' compliance programs, and this documentation could also be useful in demonstrating companies' good faith efforts to comply with the law.

Takeaways

Companies' preparation for this summer's Olympic Games are likely well under way. Understanding that U.S. regulatory agencies have already brought enforcement actions against companies for hospitality related to large sporting events, including the Olympics, and foreign government authorities have been increasing enforcement of anti-bribery laws, we recommend that companies review their own internal controls related to hospitality events to ensure that they have appropriate controls around the entertainment of government officials and other customers, and that any currently planned events remain in compliance with the FCPA and other anti-corruption laws.

Several questions that government authorities are likely to ask, and therefore that companies would be well served to think through, are:

- **Are the business activities arranged around hospitality, rather than the other way around?**
- **Did the customer suggest the hospitality?**

– **If you do something less extravagant, do you think that will decrease your chances of winning the business?**

Although no one factor is determinative and the circumstances of any given hospitality event may render it appropriate, if the answer to one or more of these questions is “yes,” authorities are more likely to view the hospitality negatively.

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