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The Winter's Tale of Corruption: The 2022 FIFA World Cup in Qatar, the Impending Shift to Winter, and Potential Legal Actions against FIFA

Kate Youd

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The Winter's Tale of Corruption: The 2022 FIFA World Cup in Qatar, the Impending Shift to Winter, and Potential Legal Actions against FIFA

*By Kate Youd**

Abstract: Hosting rights for the 2022 FIFA World Cup soccer tournament have been awarded to Qatar through a process that many alleged was corrupt. The climate in Qatar during the summer, when the tournament is traditionally held, is extremely hot, leading many in FIFA to consider potentially moving the tournament to the winter months. This move would have a major financial impact on professional soccer leagues in Europe and throughout the world, as well as on broadcasters and business partners. This Comment explores how a legal case could be brought against FIFA for its decision to award the tournament to Qatar. This Comment discusses the judicial bodies that could hear the case—FIFA's internal judicial bodies, the Court of Arbitration for Sport, and the Swiss Federal Tribunal—and analyzes how this case regarding the 2022 hosting rights would likely proceed in those judicial bodies. It ultimately concludes that given governing rules and precedent there is little likelihood that a case against FIFA could be successful.

* J.D., 2015, Northwestern University School of Law; B.A., 2011, Humanities, Brigham Young University. I thank the editors and staff of the *Northwestern Journal of International Law & Business* for their hard work and for their contributions to my Comment.

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I. INTRODUCTION

“The World Cup is going to new lands and I am a happy [p]resident as we speak of the development of football,” declared Sepp Blatter, president of the International Federation of Association Football (FIFA), on December 2, 2010, after Qatar won the vote of the FIFA Executive Committee (Executive Committee) to host the FIFA World Cup in 2022.¹ Few shared Blatter’s joy.

Since the controversial decision for Qatar to host the tournament, the opinions of both fans and those in the footballing community at large have mostly been against the decision. The president of the German football association said that the decision is “a burden for all of football.”² Various writers have called the decision “FIFA’s folly,”³ a “farce,”⁴ and a “disaster.”⁵ Others have said the award “make[s] no sense”⁶ and “you might as well hold the World Cup on Mars.”⁷ The plan is troubled by more than mere unpopularity—allegations of bribery and corruption have surfaced repeatedly over the three years since the vote was taken.⁸

¹ *2022 FIFA World Cup Awarded to Qatar*, FIFA.COM (Dec. 2, 2010), <http://www.fifa.com/news/centre/news/newsid=1344500/index.html>. While the sport is known as soccer in the United States, this Comment will refer to it as football to match the terminology from FIFA and from the rest of the world. Additionally, the terms “World Cup” and “the tournament” will be used interchangeably to refer to the FIFA World Cup. Further, FIFA is an acronym for the Fédération Internationale de Football Association, otherwise known in English as the International Federation of Association Football.

² *German Bosses Call Qatar World Cup a “Burden”*, EUROSPOORT (Oct. 26, 2013, 3:44 PM), http://au.eurosport.com/football/world-cup/2014/german-soccer-bosses-call-qatar-world-cup-a-burden_sto3979271/story.shtml.

³ Ben Wyatt, *FIFA’s Folly?: What’s Riding on the Qatar Question . . .*, CNN (Oct. 2, 2013), <http://worldsport.blogs.cnn.com/2013/10/02/fifas-folly-whats-riding-on-the-qatar-question/>.

⁴ *A Timeline of the Farce That Has 2022 Qatar World Cup and Summer-Winter Debate*, FOX SPORTS (Sept. 12, 2013, 4:02 PM), <http://www.foxsports.com.au/football/a-timeline-of-the-farce-that-has-been-the-awarding-and-changing-of-date-of-2022-qatar-world-cup/story-e6frf423-1226717830805#.UjdJrGTXQv4>.

⁵ Tony Manfred, *11 Reasons Why the Qatar World Cup Is Going to Be a Disaster*, BUS. INSIDER (Sept. 27, 2013, 2:23 PM), <http://www.businessinsider.com/11-reasons-why-the-qatar-world-cup-will-be-a-disaster-2013-9>.

⁶ Peter Fisher, *2022 World Cup –Qatar, FIFA and Winter Make No Sense*, SPORTIGE (Sept. 16, 2013), <http://sportige.com/world-cup-qatar-fifa-and-winter-make-no-sense-2013-09/>.

⁷ Dan Jones, *Dan Jones: You Might As Well Hold the World Cup on Mars*, LONDON EVENING STANDARD (Oct. 4, 2013, 12:07 PM), <http://www.standard.co.uk/comment/dan-jones-you-might-as-well-hold-the-world-cup-on-mars-8858810.html>.

⁸ See, e.g., Ryan J. Becker, Note, *World Cup 2026 Now Accepting Bribes: A Fundamental Transformation of FIFA’s World Cup Bid Process*, 13 INT’L SPORTS L.J. 132 (2013); David Conn, *World Cup 2022: Only a Rerun of Votes by FIFA Will Achieve Credibility*, GUARDIAN (Oct. 3, 2013, 3:16 PM), <http://www.theguardian.com/football/blog/2013/oct/03/world-cup-2022-fifa-qatar> (“This issue is more than just seasonal; the vote has no credibility. It should be rerun according to a new, decent, professional process befitting the love people have for the game and its greatest sporting occasion.”); *Special Report: Qatar 2022 – a Crisis of FIFA’s Own Making*, YAHOO! SPORT (Sept. 4, 2013, 8:11 AM), <https://uk.eurosport.yahoo.com/blogs/pitchside-europe/special-report-qatar-2022-crisis-fifa-own-making-070949964.html> (“Remember the

The situation worsened when FIFA admitted it was likely that the tournament would have to be moved from its traditional June–July timeslot to sometime during the winter months due to the extreme summer heat in the region.⁹ This proposed move would have massive effects, both logistical and financial, on professional football leagues throughout the world. Shifting the 2022 Qatar World Cup to winter would be financially detrimental to professional football leagues and the many businesses that depend on them.

This Comment is organized as follows: Part II explores the background leading to the 2022 tournament’s potential shift to winter. Part III discusses the governing laws of world football, including the relevant judicial bodies within FIFA as well as those outside of it. Part IV illustrates this process through a hypothetical case brought by a national football association against FIFA for the award of the hosting rights to Qatar and for the shift to winter.

While a case could be brought against FIFA in a number of venues, as will be illustrated in the hypothetical, this Comment will argue that given existing precedent it is unlikely that any of the current legal remedies available to national football associations would provide a successful solution to prevent either (1) Qatar hosting the tournament or (2) the shift of the tournament from summer to winter.

II. HISTORY

Nations have a strong incentive to bid for hosting rights for the World Cup, likely the largest sporting event in the world,¹⁰ because “[h]osting [this event] can serve as a significant bargaining chip in global politics, making the competition amongst bidding countries and cities to host [the event] intense.”¹¹ This means that bidding for a World Cup is an extensive

weeks leading to December 2, 2010. Not a day passed by without allegations of murky dealings and corruption.”).

⁹ See *Qatar World Cup Must Be Moved to Winter, Says FIFA Medical Chief*, EUROSPO, http://asia.eurosport.com/football/world-cup/2014/qatar-world-cup-must-be-moved-to-winter-says-fifa-medical-chief_sto3926095/story.shtml (last updated Sept. 16, 2013, 2:32 PM).

¹⁰ An estimated one billion viewers watched the 2014 World Cup final between Germany and Argentina, breaking previous records. Alice Philipson, *World Cup 2014: BBC Pulls in Four Times as Many Viewers as ITV*, TELEGRAPH (July 14, 2014, 4:12 PM), <http://www.telegraph.co.uk/sport/football/world-cup/10966372/World-Cup-2014-BBC-pulls-in-four-times-as-many-viewers-as-ITV.html>.

¹¹ Sean Rassel, *The Necessity for National Federations to Stand Up for Themselves*, 20 MICH. ST. J. INT’L L. 797, 798 (2012). According to Sepp Blatter, “economic interests,” including the possibility of large construction contracts for European companies, led political leaders in France and Germany to pressure FIFA executives to vote for Qatar for tournament hosts. *World Cup – Blatter Blames France, Germany for Qatar Choice*, YAHOO! SPORT (Nov. 22, 2013), <https://uk.eurosport.yahoo.com/news/football-blatter-blames-france-germany-qatar-choice-174136896—sow.html>. This political and economic interest in hosting the tournament led Qatar to spend £26.5 million pounds on their bid for the tournament. *All That Oil Money Only Fuels More Doubts over Qatar*, GUARDIAN (Jan. 17, 2011, 7:06 PM), <http://www.theguardian.com/football/blog/2011/jan/18/qatar-2022-world-cup-fifa>.

and expensive process.¹² It is also a process that depends entirely on the will of the Executive Committee, which is not accountable to any person or entity for the fairness of its decision.¹³

A. Awarding the Cup to Qatar

In December of 2010, FIFA held the vote in Zurich, Switzerland for the hosting rights to the 2018 and 2022 World Cup competitions. For the 2022 tournament, these countries were the five official candidates: Australia, Japan, South Korea, Qatar, and the United States.¹⁴ The final round of voting between Qatar and the United States ended with fourteen votes for Qatar and eight for the United States.¹⁵

Since the vote was taken and even for years before the vote, FIFA has been dogged with claims of bribery and corruption.¹⁶ The vote for Qatar—an illogical choice given the weather conditions, human rights violations, and lack of existing footballing facilities¹⁷—only enhanced these claims.¹⁸ Moreover, the farcical level of corruption in FIFA is well demonstrated in the case of Mohammed Bin Hammam, a Qatari member of the Executive

¹² For example, England spent £21 million, including public money from several cities, on their failed bid to host the 2018 World Cup, which eventually went to Russia. Australia spent £28 million on their bid for the 2022 tournament and won only one vote. *FA Reveals True Cost of England's Failed 2018 World Cup Bid*, GUARDIAN (Oct. 10, 2011, 12:20 PM), <http://www.theguardian.com/football/2011/oct/10/fa-cost-world-cup-bid>.

¹³ Indeed, in a report by an independent governance committee led by professor of criminology Mark Pieth, it was stated that “the World Cup bidding process is open to ‘corruption, risk and conflict of interest concerns.’” David Conn, *Sepp Blatter and FIFA Facing a Moment of Truth – or Another Whitewash*, GUARDIAN (Jan. 17, 2012, 1:34 PM), <http://www.theguardian.com/football/david-conn-inside-sport-blog/2012/jan/17/fifa-sepp-blatter>.

¹⁴ The results of the bidding were shared with the public by FIFA on their website. *FIFA World Cup Host Announcement Decision*, FIFA [hereinafter *FIFA World Cup Host Announcement Decision*] http://www.fifa.com/mm/document/fifafacts/mencompwc/51/97/81/fs-201_13a_fwc-bidding.pdf (last visited Oct. 6, 2014).

¹⁵ *Id.*

¹⁶ See, e.g., Becker, *supra* note 8.

¹⁷ Terrence McCoy, *FIFA: Winner of the World Cup of Corruption?*, WASH. POST (June 2, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/06/02/fifa-winner-of-the-world-cup-of-corruption/>.

¹⁸ In January of 2013, the magazine *France Football* published a 20-page story titled “Qatargate,” which claimed, among other allegations, that Michel Platini, the president of the Union of European Football Associations (UEFA), was convinced to change his vote to Qatar during a secret lunch with then-president of France, Nicolas Sarkozy, and Qatari representatives. *2022 World Cup: ‘Qatargate’*, MARCA (Jan. 29, 2013), http://www.marca.com/2013/01/29/en/football/international_football/1359488398.html. “[T]he Qataris discussed the possibility that they would buy Paris Saint-Germain and create a new TV sports channel in France to compete with Canal Plus, a channel that Mr. Sarkozy loathed.” John Lichfield, *Nicolas Sarkozy ‘Colluded’ to Get Qatar 2022 World Cup*, INDEP. (Jan. 29, 2013), <http://www.independent.co.uk/news/world/europe/nicolas-sarkozy-colluded-to-get-qatar-2022-world-cup-8471758.html>.

Committee who was removed from his position and banned from involvement in the sport for life due to corrupt practices (these practices, including bribing football-association members to vote for him for FIFA president,¹⁹ were in matters separate from Qatar's World Cup bid).²⁰ Even the president of FIFA has admitted to politically motivated collusion during the voting process, stating, among other allegations, that the Spanish and Qatari delegates agreed to vote for each other in their respective 2018 and 2022 bids.²¹ Overall, the problems surrounding FIFA,²² especially during the bid and the voting process, have cost the organization credibility and raised many questions over the validity of Qatar's hosting of the tournament.²³

This controversy over the 2022 Qatar World Cup has been problematic for FIFA's already less-than-stellar reputation, though FIFA has taken some steps to remedy the situation. FIFA's ethics investigator is beginning a tour in which he will visit each of the nations who placed a bid for either the 2018 or 2022 World Cup.²⁴ The main purpose of the investigation is, according to FIFA's ethics investigator Michael Garcia, to "determine if there have been, or not, breaches of the Ethics Code by football officials."²⁵

¹⁹ See *infra* Part III.A.2.

²⁰ James Dorsey, *FIFA Investigates Qatar's World Cup Bid*, HUFFINGTON POST (Jan. 31, 2013, 12:03 PM), http://www.huffingtonpost.com/james-dorsey/fifa-qatar-world-cup_b_2555911.html. The case against Bin Hammam will be explored in depth in Part III of this Comment.

²¹ See, e.g., Paul Pelsø, *FIFA President Sepp Blatter Admits Spanish and Qatar World Cup Bid Teams Did Trade Votes*, TELEGRAPH (Feb. 7, 2011, 11:00 PM), <http://www.telegraph.co.uk/sport/football/teams/england/8309934/Fifa-president-Sepp-Blatter-admits-Spanish-and-Qatar-World-Cup-bid-teams-did-trade-votes.html>; see also *World Cup – Blatter Blames France, Germany for Qatar Choice*, *supra* note 11 (the outcome of the vote for Qatar was pressured by France and Germany).

²² These issues are not limited to the bribery and corruption scandals. Even more significantly, serious human rights violations have occurred during the construction of new stadiums in Qatar for the tournament. See, e.g., *Global Dispute over Qatar 2022 World Cup Needs Immediate Settlement to Save Lives*, INT'L TRADE UNION CONFEDERATION (Oct. 4, 2013), <http://www.ituc-csi.org/global-dispute-over-qatar-2022?lang=en>; Robert Booth, *Qatar World Cup 2022: 70 Nepalese Workers Die on Building Sites*, GUARDIAN (Oct. 1, 2013, 8:46 AM), <http://www.theguardian.com/world/2013/oct/01/qatar-world-cup-2022-nepalese-die-building-sites>. While this issue is beyond the scope of this Comment, it is still noteworthy as yet another example of the serious troubles surrounding the placement of the 2022 World Cup in Qatar.

²³ One journalist wrote, "[T]he vote has no credibility. It should be rerun according to a new, decent, professional process befitting the love people have for the game and its greatest sporting occasion." Conn, *supra* note 8. Additionally, "Football League Chairman Greg Clarke, who was part of England's 2018 bid delegation three years ago when Qatar won the vote for 2022, said FIFA should run the vote again rather than switch the tournament to the winter. 'It should be like any public tender process and if the tender isn't valid, then have a new one,' he said." Richard Conway, *Qatar Faces No Threat to Its Right to Host 2022 World Cup*, BBC SPORT (Oct. 3, 2013, 8:14 PM), <http://www.bbc.co.uk/sport/0/football/24375821>.

²⁴ Owen Gibson, *FIFA Head of Ethics to Gather World Cup 2018 and 2022 Bid Evidence*, GUARDIAN (Sept. 30, 2013), <http://www.theguardian.com/football/2013/oct/01/fifa-ethics-world-cup-2018-2022-investigation>.

²⁵ Nick Harris, *Garcia Offers Whistleblower Anonymity During Qatar 2022 World Cup Investigation*, SPORTING INTELLIGENCE (Mar. 12, 2013), <http://www.sportingintelligence.com/2013/>

However, no matter the results of the investigation, FIFA's Ethics Committee²⁶ will not have the power to remove the 2022 World Cup from Qatar. That power remains solely with the Executive Committee.²⁷ Given the fact that Blatter, who has an immense amount of power in FIFA as president,²⁸ has repeatedly supported the Qatar vote and insisted that it will not be changed,²⁹ it is unlikely that the Executive Committee will choose to remove Qatar's hosting rights regardless of the outcome of the

03/12/garcia-offers-whistleblower-anonymity-during-qatar-2022-world-cup-investigation-120301/.

At the time this Comment was written, this investigation was still in progress. However, after the Comment was completed, Michael Garcia, FIFA's ethics investigator, completed his report, which only complicated the situation. Instead of publishing the complete report, FIFA elected to publish a significantly shorter summary written by Hans-Joachim Eckert, which stated that there was insufficient evidence of corruption during the bidding process to strip Qatar of its tournament hosting rights. Owen Gibson, *FIFA Report into Alleged Corruption Clears Qatar to Host 2022 World Cup*, GUARDIAN (Nov. 13, 2014), <http://www.theguardian.com/football/2014/nov/13/fifa-report-alleged-corruption-qatar-2022-world-cup>. Garcia attacked this conclusion mere hours after it was released, stating that Eckert's summary contained "numerous materially incomplete and erroneous representations of the facts." *FIFA Report 'Erroneous,' Says Lawyer Who Investigated Corruption Claims*, BBC (Nov. 13, 2014, 12:23 PM), <http://www.bbc.com/sport/0/football/30037729>. Garcia submitted a formal complaint over the misconstrual of his report to FIFA's Appeals Committee. Owen Gibson, *FIFA Appeals Committee to Consider Michael Garcia's Complaint*, GUARDIAN (Nov. 13, 2014), http://www.theguardian.com/football/2014/nov/13/fifa-appeals-committee-michael-garcia?CMP=tw_t_gu. Further issues arose with identification of FIFA whistleblowers. Richard Conway, *FIFA Whistleblower Phaedra Al-Majid Fears For Her Safety*, BBC (Nov. 20, 2014), <http://www.bbc.com/sport/0/football/30122601>. Thus, the implications of this situation are complex and will continue to develop in the future.

²⁶ The Ethics Committee is charged with ensuring ethical practices, as defined in the FIFA Code of Ethics, both within FIFA and within national football associations and other football organizations. See *infra* Part III.A. Mr. Garcia is the chairman of the investigatory chamber of the Ethics Committee. *Ethics Committee*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/judicialbodies/committee=1882034.html> (last visited Oct. 6, 2014).

²⁷ *FIFA's Ethics Committee Has 'No Power' to Remove World Cup 2022 from Qatar Even If Bribes Took Place*, TELEGRAPH (Nov. 14, 2013, 1:49 PM), <http://www.telegraph.co.uk/sport/football/world-cup/10449524/Fifas-ethics-committee-has-no-power-to-remove-World-Cup-2022-from-Qatar-even-if-bribes-took-place.html>. This remains true despite earlier claims by parties associated with FIFA that Qatar might lose the tournament based on the ethics investigator's findings. Andrew Warshaw, *Scala's Swiss Comments on Qatar 2022 Investigation Were 'Off-Piste'*, INSIDE WORLD FOOTBALL (Nov. 14, 2013, 1:02 PM), <http://www.insideworldfootball.com/fifa/13616-scala-s-swiss-comments-on-qatar-2022-investigation-were-off-piste>.

²⁸ Blatter's power within FIFA is essentially unlimited. He has even been compared (hyperbolically, but aptly) to North Korean President Kim Jong-un. See, e.g., Jack Blanchard, *FIFA Boss Sepp Blatter Is 'Like Kim Jong-un,' Says FA Head Greg Dyke*, IRISH MIRROR (July 22, 2014), <http://www.irishmirror.ie/sport/soccer/soccer-news/fifa-boss-sepp-blatter-like-3896543>; Misha Glenny, *Sepp Blatter: Why Football Deserves Better Than FIFA's Toxic President*, GUARDIAN (June 21, 2014), <http://www.theguardian.com/commentisfree/2014/jun/22/sepp-blatter-football-deserves-better-world-cup-brazil>.

²⁹ "There is no doubt that the World Cup in 2022 will be organised in Qatar and this decision is not reversible." *Blatter: World Cup in Qatar Is Not Reversible*, AL JAZEERA (Nov. 9, 2013, 7:16 PM), <http://www.aljazeera.com/news/middleeast/2013/11/blatter-world-cup-qatar-not-reversible-2013119172121971208.html>.

investigation into the ethics of the vote.³⁰

B. Moving the Tournament to Winter

Since the controversial vote in 2010, more problems have arisen for FIFA in planning the 2022 Qatar World Cup. One of the most significant issues is the concern that the summer heat in Qatar will make a traditional June–July World Cup impossible. This issue was apparently considered during the voting process and was repeatedly mentioned in the Bid Evaluation Report for Qatar.³¹ However, it was only after the vote was taken and Qatar was awarded the tournament that it was decided the heat would make a summer competition impossible. The chairman of FIFA’s medical committee, Michel D’Hooghe, advised in September 2013 that a summer World Cup in Qatar would be dangerous: “From the medical point of view I think it will be better not to play during the hot summer months.”³² Even Blatter admitted that awarding a summer World Cup to Qatar was “a mistake” as FIFA was fully aware of the extreme heat and logistical impossibility of a summer tournament, yet still chose Qatar for a summer tournament.³³ He recognized the difficulties of moving the tournament for club football, but insisted that it was an acceptable sacrifice because some southern hemisphere teams have previously been required to stop their season for the World Cup.³⁴ With these statements, the shift now

³⁰ The investigation has been criticized because its ultimate goal is unclear given the oft-stated impossibility of actually changing the result of the vote. Owen Gibson, *FIFA Investigator into 2018 and 2022 World Cup Bids Heads to London*, GUARDIAN (Oct. 1, 2013, 1:09 PM), http://www.theguardian.com/football/2013/oct/01/fifa-investigator-world-cup-20182022?CMP=tw_t_gu.

³¹ See FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION [FIFA], 2022 FIFA WORLD CUP BID EVALUATION REPORT: QATAR 5 (2010), available at <http://www.fifa.com/mm/document/tournament/competition/01/33/74/56/b9qate.pdf>. The Report says the following:

International standards for health and medical services are likely to be met. However, the fact that the competition is planned in June/July, the two hottest months of the year in this region, has to be considered as a potential health risk for players, officials, the FIFA family and spectators, and requires precautions to be taken.

Id. The report mentions that “Qatar is developing hi-tech, carbon-neutral cooling systems for the tournament stadiums, training sites and FIFA Fan Fest with renowned international partners and sustainability advisers[.]” but it does not provide any further details or explanation of how those cooling systems would work or what they would entail. *Id.* at 8.

³² See *Qatar World Cup Must Be Moved to Winter, Says FIFA Medical Chief*, *supra* note 9.

³³ Graham Dunbar & John Drayton, *Blatter Admits Qatar World Cup ‘Mistake’ After Confirming FIFA Always Knew Tournament Would Be Impossible in Summer*, DAILY MAIL ONLINE (Sept. 9, 2013, 6:45 PM), <http://www.dailymail.co.uk/sport/football/article-2415974/FIFA-President-Sepp-Blatter-admits-Qatar-2022-World-Cup-mistake.html>. Blatter stated the following:

Those that have taken the decision at the time, they knew there is problems with the heat. They knew it, because it was in the (technical) report . . . It was wrong to say, ‘Now we have to play in summer,’ because in summer you cannot play there. Therefore the [Executive Committee] now shall take the decision - and they will take it - that in summer you can’t play in Qatar.

Id.

³⁴ See, e.g., *Futebol Brasileiro Scores and Fixtures*, ESPN FC, <http://www.espnfc.us/futebol->

seems all but certain.³⁵

This move has caused significant controversy. There are some that support the move³⁶ and more that simply seem to accept its necessity.³⁷ However, many parties in the footballing community, particularly those in Europe, are against the move for a number of practical reasons including, most importantly, the interruption to national league seasons in Europe.³⁸

C. Financial Implications

Professional football is a massive business, especially in Europe.³⁹ There are many financial interests involved in the professional football leagues, including broadcasters⁴⁰ and individual clubs.⁴¹ The World Cup is equally significant from a financial perspective because it is one of the largest international sporting events in the world.⁴² As such, countries have

brasileiro/85/scores (last visited Oct. 6, 2014) (schedule of 2014 Brazilian league with no dates scheduled during the 2014 World Cup, from June 12 through July 13). While this is a fair point for accepting the shift of the tournament, it ignores that not all southern hemisphere leagues are scheduled during the summer (e.g., Argentina), as well as the relative burden that the shift would impose. In both numerical scope and financial burden, a move for the European season is far more likely to be impactful.

³⁵ Press Release, FIFA, Consultation process on the international match calendar 2018-2024 continues (Nov. 3, 2014), available at <http://fifa.pressfire.net/newsletter/newsletter?id=2686&html=1> ("We are getting closer to narrowing the dates for the FIFA World Cup to two options – January/February 2022 or November/December 2022.").

³⁶ See, e.g., *Sepp Blatter: Still Time for 2022 Qatar World Cup Winter Switch*, BBC (July 18, 2013), <http://www.bbc.co.uk/sport/0/football/23351824> ("It is high time we recognize that football is a world game. Half the world in the southern hemisphere are effectively forced to play the World Cup in the middle of their season, so why is there so much upset in European nations when they are expected to do the same?").

³⁷ See, e.g., Isaac Moore, *Wenger – Winter World Cup Reasonable*, ARSENAL (Oct. 4, 2013), <http://www.arsenal.com/news/news-archive/wenger-winter-world-cup-reasonable>.

³⁸ See, e.g., *Qatar World Cup: Richard Scudamore Wants Summer Event*, BBC (Aug. 15, 2013), <http://www.bbc.co.uk/sport/0/football/23719835>.

³⁹ Reports on finances from European football leagues found that, despite economic troubles across the region, "in 2011/12 the European football market grew to €19.4 billion (up 11%), of which the 'big five' leagues [the English Premier League in the United Kingdom, the Bundesliga in Germany, La Liga in Spain, Serie A in Italy, and Ligue 1 in France] had a market share of 48% (€9.3 billion)[.]" These leagues are only growing more commercial—the 2011–2012 season saw revenues of €2.9 billion in the United Kingdom, up 16%. DELOITTE, ANNUAL REVIEW OF FOOTBALL FINANCE 2013 — HIGHLIGHTS 8 (2013), available at <http://www.slideshare.net/deloitteuk/annual-review-of-football-finance-2013>.

⁴⁰ Domestic broadcast deals in the United Kingdom are expected to generate £3.4 billion over three seasons starting in 2013. For the 2013–2014 season, it is likely that the money from broadcasting deals that will return directly to the clubs will be between £60 million and £95 million. *Id.* at 9.

⁴¹ See David Conn, *Premier League Finances: The Full Club-by-club Breakdown and Verdict*, GUARDIAN (Apr. 18, 2013, 8:40 AM), <http://www.theguardian.com/football/2013/apr/18/premier-league-finances-club-by-club>.

⁴² See, e.g., Peter J. Schwartz, *The World's Top Sports Events*, FORBES (Mar. 5, 2010, 12:20 PM), <http://www.forbes.com/global/2010/0315/companies-olympics-superbowl-daytona-worlds-top-sports->

substantial motivation to win hosting rights to the tournament.⁴³ Because of these significant, competing financial considerations, the move of the 2022 Qatar World Cup from summer to winter could cause many problems for professional football and the many businesses involved with it.

1. Europe

Moving the 2022 Qatar World Cup to winter will have a significant effect on European football leagues. Generally, their season runs from late August to mid-May, so it would clearly be disrupted by a November–December World Cup. The altered 2022–2023 season would likely begin in June and conclude the following June, with a mid-season break for the international tournament.⁴⁴ Effects could include “the impact on players’ contracts, some broadcast deals and the knock-on effect on various other sports.”⁴⁵

National teams are generally comprised of the top professional players from each country. Losing top players due to injuries sustained during the tournament would be a likely result, as would fatigue for players who participated. These challenges would make it more difficult for clubs to compete successfully. Because this would have a massive effect on the league, it would also likely have an effect on the league’s revenues.⁴⁶

The issues affecting the leagues would obviously extend to business partners as well. One important business partner that would be impacted is the broadcasting industry—the move from summer to winter would affect broadcasters for the English Premier League and for the World Cup. If the 2022 Qatar World Cup is moved, English Premier League broadcasters could have problems retaining their audience’s interest in the competition because of the large gap in the middle of the season. The 2022 Qatar World Cup broadcasters would also struggle, considering, among other reasons, that a “summer tournament is more lucrative than a winter

events.html (the 2010 World Cup was surpassed in gross revenue only by the 2008 Summer Olympics and the 2010 Super Bowl).

⁴³ See, e.g., Simon Chadwick, *Hard Evidence: What is the World Cup Worth?*, CONVERSATION (June 4, 2014, 1:03 AM), <http://theconversation.com/hard-evidence-what-is-the-world-cup-worth-27401> (analysis of expected \$3 billion to \$14 billion economic impact for the tournament’s host countries, as well as an exploration of potential negative effects).

⁴⁴ *Qatar World Cup 2022: Pundits Debate Potential Date Swap*, BBC (Oct. 4, 2013), <http://www.bbc.co.uk/sport/0/football/24403556>.

⁴⁵ Owen Gibson, *FIFA Must Consult over Qatar World Cup Switch, Says Richard Scudamore*, GUARDIAN (Oct. 3, 2013), <http://www.theguardian.com/football/2013/oct/03/fifa-qatar-world-cup-richard-scudamore>.

⁴⁶ *Id.* Richard Scudamore, the chief executive of the English Premier League, has stated that it would be “morally reprehensible” for FIFA to move the 2022 Qatar World Cup without meaningful consultation with professional football leagues because of the effect that the shift would have on these leagues. *Id.* “As though because [FIFA has] the power to decide where the World Cup goes, they have the power to decide when it’s played. Those are two very different things. The sporting calendar across the world is affected.” *Id.*

tournament from a telecast point of view,⁴⁷ due to the lack of competition from other sports broadcasts or the standard network television season.

2. *United States*

The impact of the winter move on the sport in the United States would not be as drastic as it would be on football in other areas of the world because Major League Soccer's (MLS) season currently runs from March to October.⁴⁸ However, the potential issues for marketing partners in other nations would also exist in the United States. It is likely that, due to the competition of other sports at the same time of year, such as American football, basketball, and hockey, U.S. broadcasters of the 2022 Qatar World Cup would lose significant revenue if the event is moved to the winter months.⁴⁹ Fox Network, which has already paid \$425 million for the rights to broadcast the 2022 Qatar World Cup, has publicly opposed the winter move.⁵⁰

Additionally, the United States has an even stronger reason to oppose the award of the World Cup to Qatar whether it is moved to winter or not: they were the second-place bidders for the hosting rights to the tournament.⁵¹ Therefore, if the U.S. Soccer Federation (the national association for football in the United States) wishes to do so, it may have a claim against FIFA for its decision to move the tournament to winter, as may the English Premier League or other national football associations. But is there a legal avenue for any of these parties to make a claim against FIFA's award of the 2022 World Cup to Qatar and its necessary shift of the World Cup to winter?

⁴⁷ Siddarth Singh, *World Cup 2022 – Controversy Surrounds the Tournament in Qatar*, HARD TACKLE (Nov. 9, 2013), <http://www.thehardtackle.com/2013/world-cup-2022-controversy-surrounds-the-tournament-in-qatar/>.

⁴⁸ However, this may change before 2022. It is possible that Major League Soccer (the MLS) will adopt an August–May schedule that is similar to the European football schedule. If this change occurs, the effect on the MLS would be more similar to that on the English Premier League. Joe Prince-Wright, *Report: MLS Will Adopt European Schedule in 2014 . . . Would August-May Work?*, NBC SPORTS (Oct. 14, 2013, 10:45 AM), <http://prosoccertalk.nbcsports.com/2013/10/14/report-mls-will-adopt-european-schedule-in-2014-would-august-may-work/>.

⁴⁹ Tony Manfred, *FIFA Might Move the 2022 Qatar World Cup to Winter Because It's Too Hot, and It's Going to be Be a Total Mess*, BUS. INSIDER (Sept. 12, 2014, 10:01 AM), <http://www.businessinsider.com/qatar-world-cup-winter-2014-9>.

⁵⁰ Tariq Panja, *Fox Said to Oppose FIFA Plan to Shift 2022 Soccer World Cup*, BLOOMBERG (Sept. 17, 2013, 1:58 AM), <http://www.bloomberg.com/news/2013-09-16/fox-said-to-oppose-fifa-plan-to-reschedule-2022-soccer-world-cup.html>.

⁵¹ *FIFA World Cup Host Announcement Decision*, *supra* note 14.

III. GOVERNING LAWS OF FOOTBALL

To determine the possibility of taking action against FIFA and potentially changing the decision to award the tournament to Qatar, move it to winter, or both, it is necessary to explore the organizational structure and legal governance of FIFA. Because “[a]rbitration clauses contained in the statutes of an association are binding on its members for litigation,” any case against FIFA will have to follow the procedures set up by FIFA for arbitration and litigation.⁵² The internal organization of FIFA, the jurisdiction of the Court of Arbitration for Sport (CAS), and the possibility of appeal to Swiss courts are all relevant legal recourses to any potential cases against FIFA for its World Cup hosting decision, especially if the bribery allegations are legitimate. In defining the structure of the laws and courts governing world football, this part will use the 2012 corruption case against former Executive Committee member Mohamed Bin Hammam to demonstrate how a case might progress through the system.⁵³

A. FIFA

1. *Structure of FIFA*

FIFA is made up of 209 national associations, which are organized into six continental confederations.⁵⁴ Each national association is responsible for all levels of football in the country, from amateur to professional clubs and leagues.⁵⁵ The FIFA Congress, “the legislative body of world football,” is made up of one delegate from each national association and is responsible for, among other duties, electing the president of FIFA, amending the FIFA Statutes, approving financial activities, and removing members of the Executive Committee from office.⁵⁶ FIFA is primarily led by the Executive Committee, a group of representatives from a variety of geographic regions⁵⁷ appointed by various football confederations and associations.⁵⁸ The Executive Committee is

⁵² CORINA LUCK, ARBITRATION IN FOOTBALL: ISSUES AND PROBLEMS HIGHLIGHTED BY FIFA’S EXPERIENCES WITH THE COURT OF ARBITRATION FOR SPORTS 26 (2004).

⁵³ Mohamed Bin Hammam v. FIFA, CAS 2011/A/2625, Arbitral Award (July 19, 2012), available at http://www.tas-cas.org/fileadmin/user_upload/Award20262520_FINAL_internet.pdf. This case was selected not only because Bin Hammam is from Qatar, but also because it could be a promising sign for future high-level cases against FIFA.

⁵⁴ *The Organisation*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/index.html> (last visited Aug. 6, 2014).

⁵⁵ See, e.g., *What The FA Does*, THE FA, <http://nav.thefa.com/sitecore/content/TheFA/Home/TheFA/WhoWeAre/WhatTheFADoes> (last visited Jan. 26, 2015).

⁵⁶ *FIFA Congress 2013: All You Need to Know*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/congress/thingstoknow.html> (last visited Aug. 6, 2014).

⁵⁷ Rassel, *supra* note 11, at 804.

⁵⁸ *FIFA Executive Committee*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/executivecommittee.html> (last visited Aug. 6, 2014).

responsible for, among other things, “decisions on all cases that do not come within the responsibility of Congress or are not reserved for other bodies by law or under these [FIFA] Statutes.”⁵⁹ FIFA also contains a variety of other committees responsible for different areas of world football governance, including marketing and television, finance, legal, and club football.⁶⁰

FIFA attempts to privately handle any footballing disputes, without involving external courts, through its internal bodies that are specifically devoted to dispute resolution.⁶¹ It has the right to do so because the European Council⁶² has “stresse[d] its support for the independence of sports organisations and their right to organise themselves through appropriate associative structures” and has recognized that “it is the task of sporting organisations to organise and promote their particular sports . . . in the way which they think best reflects their objectives.”⁶³ Therefore, “FIFA rules require all those subject to its jurisdiction to waive any right to take recourse to the courts, and to be bound by decisions of FIFA’s internal arbitral-like panel.”⁶⁴

There are several different arms of FIFA before which parties can bring complaints. For example, “[t]he Dispute Resolution Chamber, created with the revision of the FIFA Regulations for the Status and Transfer of

⁵⁹ *FIFA Executive Bodies*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/excoandemergency/index.html>. See also FIFA, FIFA STATUTES (2014) [hereinafter FIFA STATUTES], available at http://www.fifa.com/mm/document/AFFederation/Generic/02/41/81/55/FIFASstatuten2014_E_Neutral.pdf (last visited Aug. 6, 2014).

⁶⁰ *Standing Committees*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/standingcommittees/index.html> (last visited Aug. 6, 2014).

⁶¹ *Interview: Omar Ongaro on the FIFA's Dispute Resolution System*, INT'L SPORT LAWYERS ASS'N, <http://isla-int.com/info/seite/lang/2/artikel/132/Newsletter-130206-DE> (last visited Oct. 6, 2014).

⁶² The European Council is an institution of the European Union (EU) that “defines [its] general political direction and priorities.” *The Institution*, EUROPEAN COUNCIL, <http://www.european-council.europa.eu/the-institution?lang=en> (last visited Aug. 6, 2014) (stating that the European Council makes declarations on various issues in the EU).

⁶³ Declaration on the Specific Characteristics of Sport and Its Social Function in Europe, of Which Account Should Be Taken in Implementing Common Policies, Presidency Conclusions, Nice European Council Meeting, (December 7-9, 2000) at Annex IV, #7. However, the European Council adds that these rights must have “due regard for national and Community legislation and [be] on the basis of a democratic and transparent method of operation.” *Id.*

⁶⁴ 2 AARON N. WISE & BRUCE S. MEYER, INTERNATIONAL SPORTS LAW AND BUSINESS 1461 (1997) [hereinafter WISE Vol. 2]. FIFA is able to enforce this requirement because their “rules and regulations become incorporated in [each] national soccer federation’s rules.” *Id.* See also FIFA, FIFA STATUTES § 3, art. 68 (July 2013), available at http://www.fifa.com/mm/document/AFFederation/Generic/02/14/97/88/FIFASstatuten2013_E_Neutral.pdf (last visited Oct. 6, 2014) (“The [a]ssociations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the Association . . . to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration.”).

Players in September 2001, is competent to decide labour disputes between clubs and players.”⁶⁵ However, FIFA has three primary judicial bodies that are most likely to hear disputes, especially those regarding a FIFA official: the Disciplinary Committee, the Ethics Committee, and the Appeals Committee.⁶⁶

The Disciplinary Committee is “in charge of sanctioning inadmissible conduct both on and off the field of play.”⁶⁷ Under Article 76 of the FIFA Disciplinary Code, the Disciplinary Committee “is authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of another body.”⁶⁸ Many of the Disciplinary Committee’s responsibilities deal with issues during football matches, such as “sanctioning serious infringements which have escaped the match officials’ attention” or “rectifying obvious errors in the referee’s disciplinary decisions.”⁶⁹

The Ethics Committee is the judicial body of FIFA that is most likely to hear issues involving bribery and corruption of FIFA officials. It is split into an investigatory chamber and an adjudicatory chamber.⁷⁰ The adjudicatory chamber may, in addition to its duties involving the Ethics Committee’s investigations, “rule on breaches of provisions of the FIFA Disciplinary Code which concern morally or ethically incorrect conduct.”⁷¹ The Ethics Committee is specifically charged with preventing any bribery or other misconduct committed by the Executive Committee.⁷² The Ethics Committee is also required to be “entirely independent[] and must avoid any third-party influence.”⁷³ Any party bound by the FIFA Code of Ethics, which includes all FIFA officials and players,⁷⁴ may file a complaint regarding a breach of ethics to the investigatory chamber of the Ethics Committee,⁷⁵ which will then initiate proceedings to potentially

⁶⁵ LUCK, *supra* note 51, at 7.

⁶⁶ *FIFA Judicial Bodies*, FIFA.COM, http://www.fifa.com/aboutfifa/organisation/bodies/judicial_bodies/index.html (last visited Oct. 6, 2014).

⁶⁷ LUCK, *supra* note 51, at 7.

⁶⁸ FIFA, FIFA DISCIPLINARY CODE ch. 1, § 3, art. 76 (2011), *available at* <http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

⁶⁹ *Id.* art. 77.

⁷⁰ FIFA, FIFA CODE OF ETHICS pt. III, ch. 1, § 1, art. 26 (2012), <http://www.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics2012e.pdf>.

⁷¹ *Id.* art. 29(5). The Ethics Committee also includes an investigatory chamber that “shall investigate potential breaches of [the FIFA Code of Ethics] on its own initiative.” *Id.* Art. 28(1). The Ethics Committee may judge “the conduct of all persons bound by [the FIFA Code of Ethics] while performing their duties.” *Id.* art. 27(2).

⁷² Rassel, *supra* note 11, at 804.

⁷³ FIFA CODE OF ETHICS, *supra* note 69, art. 34.

⁷⁴ *Id.* pt. 1, art. 2. There was some dispute in the Bin Hammam case on whether or not, as a member of FIFA’s Executive Committee, Bin Hammam was bound by the FIFA Disciplinary Code. *See* Mohamed Bin Hammam v. FIFA, CAS 2011/A/2625, Arbitral Award, ¶ 103 (July 19, 2012). However, any FIFA official is expressly bound by the FIFA Code of Ethics, including members of the Executive Committee.

⁷⁵ FIFA CODE OF ETHICS, *supra* note 69, art. 61.

recommend to the adjudicatory chamber for examination.⁷⁶

The Appeal Committee, another judicial branch, “is responsible for deciding appeals against any of the Disciplinary Committee’s decisions that FIFA regulations do not declare as final or referable to another body.”⁷⁷ It is also responsible for deciding appeals against the Ethics Committee’s adjudicatory decisions.⁷⁸ Decisions by the Appeals Chamber can be appealed to the Court of Arbitration for Sport.⁷⁹

These committees and chambers are part of a system that is set up to ensure that most disputes arising in the footballing world are resolved without external influence. They are governed by, among other documents, the FIFA Code of Ethics and the FIFA Disciplinary Code.⁸⁰

The members of these bodies are appointed by the Executive Committee.⁸¹ The chairman of each committee is required to have “legal qualifications,” though those qualifications are unspecified.⁸² The FIFA Disciplinary Code ensures that “the judicial bodies of FIFA pass their decisions entirely independently; in particular, they shall not receive instructions from any other body.”⁸³ Members of the judicial committees are expected to be impartial⁸⁴ and to keep all matters confidential.⁸⁵

Parties to a decision have a right to be heard before any decision is passed.⁸⁶ Any type of proof may be produced in front of the judicial bodies,⁸⁷ and the bodies have “absolute discretion regarding proof.”⁸⁸ Parties are entitled to have legal representation in judicial body cases and may not be required to appear personally,⁸⁹ however, they may be obligated

⁷⁶ *Id.* arts. 61–69.

⁷⁷ FIFA DISCIPLINARY CODE, *supra* note 67, art. 79.

⁷⁸ FIFA CODE OF ETHICS, *supra* note 69, art. 80.

⁷⁹ *Id.* art. 81(1); *see also* Part III.B.

⁸⁰ FIFA STATUTES, *supra* note 58, art. 61.

⁸¹ FIFA DISCIPLINARY CODE, *supra* note 67, art. 81(1). This could potentially create a conflict of interest if a case was brought against an individual Executive Committee member or the Executive Committee as a whole, even though the rules claim that the judicial bodies are independent. *Id.* art. 85(1).

⁸² *Id.* art. 81(5). The current chairman of the investigatory chamber of the Ethics Committee, Michael Garcia, was a partner in the New York office of Kirkland and Ellis LLP. *Mr. Michael J. Garcia*, FIFA.COM, http://www.fifa.com/mm/document/affederation/bodies/01/66/50/29/Michael_garcia_en.pdf (last visited Aug. 6, 2014). The chairman of the adjudicatory committee, Hans-Joachim Eckert, was the presiding judge in the Penal Court of Munich, Germany. *Mr. Hans-Joachim Eckert*, FIFA.COM, http://www.fifa.com/mm/document/affederation/bodies/01/66/50/17/hans-joachimeckert_en.pdf (last visited Aug. 6, 2014).

⁸³ FIFA DISCIPLINARY CODE, *supra* note 67, art. 85(1).

⁸⁴ *Id.* art. 87; FIFA CODE OF ETHICS, *supra* note 69, art. 35.

⁸⁵ FIFA CODE OF ETHICS, *supra* note 69, art. 36; FIFA DISCIPLINARY CODE, *supra* note 67, art. 88.

⁸⁶ FIFA DISCIPLINARY CODE, *supra* note 67, art. 94.

⁸⁷ *Id.* art. 96; FIFA CODE OF ETHICS, *supra* note 69, art. 46.

⁸⁸ FIFA CODE OF ETHICS, *supra* note 69, art. 50; FIFA DISCIPLINARY CODE, *supra* note 67, art. 97(1).

⁸⁹ FIFA CODE OF ETHICS, *supra* note 69, art. 40; FIFA DISCIPLINARY CODE, *supra* note 67, art. 100.

to collaborate with the adjudicatory chamber of the Ethics Committee.⁹⁰ According to the Disciplinary Code,⁹¹ the FIFA Code of Ethics,⁹² and CAS jurisprudence,⁹³ the standard of review of decisions in these bodies is the “personal conviction” of the judges. The burden of proof rests on FIFA in cases involving disciplinary infringements⁹⁴ and on the Ethics Committee in cases in front of their adjudicatory body.⁹⁵ These rules apply to each of FIFA’s three judicial bodies.

2. *Bin Hammam Case*

Both the Ethics Committee and the Appeals Committee were the first groups to make decisions in the Bin Hammam case. In March 2011, Mohamed Bin Hammam, a Qatari member of the Executive Committee, announced that he would be running for the position of FIFA president in the June 2011 election, thereby making him the only candidate to run against incumbent president Sepp Blatter.⁹⁶ In order to promote his run, Bin Hammam set up a meeting with the Caribbean Football Union (CFU) on May 10–11, 2011.⁹⁷

After Bin Hammam’s speech about his candidacy to the gathered officials, he left the room.⁹⁸ Jack Warner, FIFA’s vice president and the president of CONCACAF (the confederation including North America and the Caribbean), then announced that there were gifts for the representatives from the CFU for each national association.⁹⁹ Each representative was given a brown envelope with \$40,000 cash.¹⁰⁰ This apparent effort by Bin Hammam to bribe the officials to vote for him in the presidential election led to an investigation by the Ethics Committee.¹⁰¹ It also led to Bin Hammam withdrawing from the presidential election, allowing Blatter to win unchallenged.¹⁰²

Investigations of the bribery led to the Ethics Committee issuing on July 23, 2012 a lifetime ban on Bin Hammam from all football-related

⁹⁰ FIFA CODE OF ETHICS, *supra* note 69, art. 41(2).

⁹¹ FIFA DISCIPLINARY CODE, *supra* note 67, art. 97(3).

⁹² FIFA CODE OF ETHICS, *supra* note 69, art. 51.

⁹³ Mohamed Bin Hammam v. FIFA, CAS 2011/A/2625, Arbitral Award, ¶ 153 (July 19, 2012).

⁹⁴ FIFA DISCIPLINARY CODE, *supra* note 67, art. 99.

⁹⁵ FIFA CODE OF ETHICS, *supra* note 69, art. 52.

⁹⁶ Matt Scott, *Mohamed Bin Hammam Confirms Intention to Run for FIFA Presidency*, GUARDIAN (Mar. 18, 2011), <http://www.theguardian.com/football/2011/mar/18/mohamed-bin-hammam-fifa-president>.

⁹⁷ Bin Hammam, CAS 2011/A/2625, ¶ 4.

⁹⁸ *Id.* ¶ 7.

⁹⁹ *Id.*

¹⁰⁰ *FIFA Exec Bin Hammam Banned for Life for Bribery*, CBS NEWS (July 23, 2011), <http://www.cbsnews.com/news/fifa-exec-bin-hammam-banned-for-life-for-bribery/>.

¹⁰¹ Bin Hammam, CAS 2011/A/2625, ¶13.

¹⁰² *FIFA: Mohamed Bin Hammam of Qatar Ends Presidential Bid*, BBC (May 29, 2011), <http://www.bbc.co.uk/news/world-middle-east-13587449>.

activity for infringement of the FIFA Code of Ethics.¹⁰³ Upon appeal to the Appeals Committee, the decision was confirmed.¹⁰⁴

The decisions were based on several sections of the FIFA Code of Ethics, which were revised in 2012. Article 3, which relates closely to Article 13 in the revised code, stated in part that “Officials shall show commitment to an ethical attitude while performing their duties . . . [and] may not abuse their position as part of their function in any way, especially to take advantage of their function for private aims or gains.”¹⁰⁵ Article 9 discussed loyalty and confidentiality to FIFA and various associations, Article 10 laid out rules for accepting and giving gifts, and Article 11 forbade bribery.¹⁰⁶ Upon this basis, the Ethics Committee upheld a lifetime ban on any participation by Bin Hammam in football-related activities.¹⁰⁷ After the Appeals Committee upheld the decision, Bin Hammam took his appeal to the next possible level for a football-related case: the Court of Arbitration for Sport.¹⁰⁸

B. Court of Arbitration for Sport

1. Structure of CAS

If a dispute cannot be resolved within the ranks of FIFA, or if a party wishes to appeal a decision made by one of the FIFA tribunals, the case will go to the Court of Arbitration for Sport (CAS).¹⁰⁹ CAS, originally part of the International Olympic Committee but now independent from that organization, was formed as “an independent authority in international sports-related matters that could deal and pronounce binding decisions to settle possible litigation.”¹¹⁰ This independence is crucial, as it led the Swiss Federal Tribunal to recognize the court as a “true court of arbitration, maintaining that the awards were being pronounced by independent arbitrators and that their decisions could be categorized as arbitral

¹⁰³ *Ethics Committee Bans Football Officials*, FIFA.COM (July 23, 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1479068/index.html>.

¹⁰⁴ *Appeal Committee Confirms Ethics Committee Decision on Bin Hammam*, FIFA.COM (Sept. 15 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1511253/>. While neither the Ethics Committee nor the Appeals Committee publish their decisions, the transcript of each decision was published in the CAS appeal, and a media release was published by FIFA after each decision. *Id.*; *FIFA Exec Bin Hammam Banned for Life for Bribery*, *supra* note 100; *see also* Bin Hammam, ¶¶ 21, 23.

¹⁰⁵ *Id.* ¶ 109.

¹⁰⁶ *Id.*

¹⁰⁷ *Appeal Committee Confirms Ethics Committee Decision on Bin Hammam*, FIFA.COM (Sept. 15 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1511253/>.

¹⁰⁸ *FIFA Rejects Mohamed Bin Hammam's Appeal Against Football Ban for Life*, GUARDIAN (Sept. 15, 2011), <http://www.theguardian.com/football/2011/sep/15/fifa-reject-mohamed-bin-hammam-appeal>.

¹⁰⁹ LUCK, *supra* note 51, at 1.

¹¹⁰ *Id.* at 2.

awards.”¹¹¹

CAS is divided into two divisions, the Ordinary Arbitration Division and the Appeals Arbitration Division.¹¹² The Ordinary Arbitration Division deals with first-instance cases heard at the CAS, which are primarily commercial disputes (e.g., contract, broadcasting, and licensing disputes).¹¹³ The Appeals Arbitration Division is responsible for “resolv[ing] disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide.”¹¹⁴ This division is where FIFA cases are primarily heard because the cases are almost always heard within FIFA’s internal bodies before moving to CAS.¹¹⁵ To file an appeal, all legal remedies at lower levels must be exhausted, including internal remedies within FIFA.¹¹⁶

FIFA accepted CAS jurisdiction for appellate cases in the early 2000s, and now football cases make up a significant portion of the CAS caseload.¹¹⁷ Once a party has sought all possible relief from the appropriate governing body of FIFA, they can submit a statement of appeal and an appellate brief to CAS.¹¹⁸ An arbitrator will then decide whether to uphold the decision or vacate and replace the decision.¹¹⁹ These decisions are binding on the parties.¹²⁰ Swiss law is most often the law applied in CAS arbitration,¹²¹ although the panel will first attempt to apply any set of rules the parties have agreed upon including the laws and regulations of FIFA.¹²²

CAS arbitration occurs in front of a panel of three arbitrators. When a dispute is submitted to CAS, the court offers the parties a list of potential arbitrators of various nationalities. The parties choose one arbitrator each and a third arbitrator together; this third arbitrator will act as the president

¹¹¹ *Id.*

¹¹² COURT OF ARBITRATION FOR SPORT, STATUTES OF THE BODIES WORKING FOR THE SETTLEMENT OF SPORTS-RELATED DISPUTES art. S20(a) (2010) [hereinafter CAS STATUTES], available at http://www.tas-cas.org/fileadmin/user_upload/Code20201220_en_2001.01.pdf. The Ordinary Arbitration division “constitutes [p]anels, whose responsibility is to resolve disputes submitted to the ordinary procedure, and performs . . . all other functions in relation to the efficient running of the proceedings” and deals with cases not involving sports bodies. *Id.*

¹¹³ Louise Reilly, *An Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, 2012 J. DISP. RESOL. 63, 64 (2012).

¹¹⁴ CAS STATUTES, *supra* note 111, art. S20(b).

¹¹⁵ FIFA STATUTES, *supra* note 58, art. 64.

¹¹⁶ CAS STATUTES, *supra* note 111, art. R47.

¹¹⁷ Rassel, *supra* note 11, at 809.

¹¹⁸ FIFA STATUTES, *supra* note 58, art. 64.

¹¹⁹ Rassel, *supra* note 11, at 810.

¹²⁰ This is true in most cases; however, “CAS decisions are only enforceable in nations that have signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,” which includes all countries that bid on the 2018 or 2022 World Cup. *Id.* at 811.

¹²¹ 1 AARON N. WISE & BRUCE S. MEYER, INTERNATIONAL SPORTS LAW AND BUSINESS 676 (1997) [hereinafter WISE Vol. 1].

¹²² CAS STATUTES, *supra* note 111, art. R45.

of the panel of arbitrators before which the parties will dispute their case.¹²³ These arbitrators have agreed to both objectivity¹²⁴ and confidentiality.¹²⁵

The standard of review for CAS cases, as confirmed in the Bin Hammam case, is “comfortable satisfaction.”¹²⁶ CAS has specified that, “in practical terms, [the] standard of proof of personal conviction [used by FIFA in their judicial bodies] coincides with the “‘comfortable ‘satisfaction’ standard [used by CAS]” and clarified that “[i]t is a standard that is higher than the civil standard of ‘balance of probability’ but lower than the criminal standard of ‘proof beyond a reasonable doubt.’”¹²⁷

2. *Bin Hammam Case*

When Mohamed Bin Hammam received his decision from the Appeals Committee, he filed a statement of appeal with CAS to attempt to reverse the decision and his lifetime ban.¹²⁸ His appeal had a number of procedural and substantive claims.¹²⁹ It alleged, among other procedural claims, that he did not receive proper due process,¹³⁰ that FIFA’s internal processes against him were not impartial,¹³¹ and that he was not properly informed of the charges brought against him.¹³² Substantively, he claimed that FIFA relied on blatantly unreliable witnesses in making its decision,¹³³ lacked proper evidence,¹³⁴ and used improper evidence¹³⁵ in making its determination against him. Regarding any procedural unfairness involving due process or impartiality, CAS determined that the very fact of an appeal to CAS remedied previous grievances.¹³⁶ Therefore, the panel determined

¹²³ WISE Vol. 1, *supra* note 120, 675–76. Additionally, “[i]f the parties desire there to be only one arbitrator, they appoint him or her by mutual agreement.” *Id.*

¹²⁴ CAS STATUTES, *supra* note 111, art. S18.

¹²⁵ *Id.* art. S19.

¹²⁶ Mohamed Bin Hammam v. FIFA, CAS 2011/A/2625, Arbitral Award, ¶ 153 (July 19, 2012).

¹²⁷ *Id.*

¹²⁸ *Id.* ¶ 25.

¹²⁹ *Id.* ¶¶ 37, 142.

¹³⁰ *Id.* ¶ 81.

¹³¹ *Id.* ¶ 87.

¹³² *Id.* ¶ 93.

¹³³ *Id.* ¶ 95. Many of the parties who were witnesses in the case were also charged with corruption. Jack Warner, who was deeply involved in the situation and whose statements were used against Bin Hammam, resigned from football when FIFA began investigations into his alleged ethical breaches. Because he resigned willingly, “all Ethics Committee procedures against him [were] closed and the presumption of innocence is maintained.” *FIFA Vice-President Jack A. Warner Resigns*, FIFA.COM (June 20, 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1455834/>.

¹³⁴ Bin Hammam, CAS 2011/A/2625, ¶ 106.

¹³⁵ *Id.* ¶ 99.

¹³⁶ *Id.* ¶ 129 (“[A]n appeal to the CAS arbitration procedure cures any infringement of a due process right that may have been committed by a sanctioning sports organization during its internal disciplinary proceedings.”). “[T]he [p]anel concludes that any possible procedural violation that may have occurred in the

the case on substantive issues.

CAS focused its determination on the charge of bribery. The panel specified that to satisfy a charge of bribery the accusers must prove four elements:

- (i) The person committing the act of bribery must be a FIFA official;
- (ii) a gift or other inducement must have been offered;
- (iii) the act must be addressed to a third party; and
- (iv) the purpose of the act must be to gain an advantage for the person offering the bribe or for some third person.¹³⁷

To fulfill these elements and to attempt to link the cash gifts to Bin Hammam, the panel went through the statements of various witnesses.¹³⁸ After determining that several of the witness statements that FIFA used in ruling against Bin Hammam lacked consistency and credibility,¹³⁹ the panel decided that there was insufficient evidence to link Bin Hammam to the alleged bribes to the point of comfortable satisfaction.¹⁴⁰ The panel was careful to note that “it [was] not making any sort of affirmative finding of innocence in relation to Mr. Bin Hammam”,¹⁴¹ and repeatedly noted that Bin Hammam was likely the source of the money at issue.¹⁴² The panel articulated concern about FIFA’s handling of the investigation¹⁴³ and expressly left the matter open to further proceedings if new evidence was discovered.¹⁴⁴ Until these new proceedings against Bin Hammam

course of the proceedings before the FIFA Ethics and Appeal Committees has been cured.” *Id.* ¶ 138.

¹³⁷ *Id.* ¶ 145.

¹³⁸ *Id.* ¶¶ 172, 177–84.

¹³⁹ *Id.* ¶ 158. One of the witnesses whose testimony held the least weight, Jack Warner, resigned from football before his corruption cases could move forward. The panel noted that Warner “appears to be prone to an economy with the truth.” *Id.* ¶ 161.

¹⁴⁰ “If Mr. Warner and his statements are taken out of the equation, the record of evidence in relation to the [r]espondent’s case on the origins of the suitcase and the monies it contained is founded on extremely limited sources, to put the point generously.” *Id.* ¶ 169. “[T]he majority of the [p]anel [has] certain doubts as to the weight of the evidence on which the charges against Mr. Bin Hammam are founded.” *Id.* ¶ 190. “[T]he majority of the [p]anel is unable to conclude to its comfortable satisfaction that the charges against Mr. Bin Hammam are established.” *Id.* ¶ 203.

¹⁴¹ *Id.* ¶ 204.

¹⁴² *Id.* ¶¶ 195, 204 (“[T]his conclusion should not be taken to diminish the significance of its finding that it is more likely than not that Mr. Bin Hammam was the source of the monies.”).

¹⁴³ “It is readily apparent that the investigation carried out by FIFA was neither thorough in respect of the matters that it did address, nor comprehensive in its scope. Of great concern to the [p]anel is the decision by FIFA to terminate the investigation of Mr. Warner when he resigned from FIFA.” *Id.* ¶ 201. “By closing the Ethics Committee procedures, FIFA disabled itself from pursuing a proper, thorough and complete investigation of Mr. Bin Hammam’s role in the matters that give rise to these proceedings. In effect, the paucity of the evidence is connected to FIFA’s own actions and inactions.” *Id.* ¶ 202.

¹⁴⁴ *Id.* ¶ 208.

were taken by FIFA, however, CAS annulled FIFA's decision against him and reversed his lifetime ban on football-related activities.¹⁴⁵

C. Swiss Federal Tribunal

If a party wishes to appeal a CAS decision, its options are limited. FIFA and the CAS are both governed by the laws of Switzerland, the home of each organization's headquarters.¹⁴⁶ Therefore, in some circumstances CAS awards may be challenged in front of the Swiss Federal Tribunal.¹⁴⁷ However, these circumstances are limited.¹⁴⁸ If a case comes before a Swiss court, it is important to note that Switzerland does not have a specific sports law statute, as can be found in other nations like France, Spain, and Italy; therefore, "[w]hen sports matters come before the Swiss courts for decision, they apply their existing laws, principles, etc., to resolve them."¹⁴⁹

The case against Bin Hammam did not reach the Swiss Federal Tribunal. After his initial success in CAS, FIFA brought another corruption case against Bin Hammam regarding other allegations of conflicts of interest,¹⁵⁰ which he lost at both the internal level and at the CAS level.¹⁵¹ Bin Hammam did not appeal to Swiss courts the October 2012 decision of CAS, which refused to overturn his temporary ban on football-related activities.¹⁵² In December of 2012, Bin Hammam resigned from all football-related activities and was banned for life by FIFA from any future activities related to organized football.¹⁵³

¹⁴⁵ *Id.* ¶ 207; see also *Mohamed Bin Hammam Wins Appeal Against FIFA Ban*, BBC (July 19, 2012), <http://www.bbc.com/sport/0/football/18901316>.

¹⁴⁶ Switzerland is also the location of the head of UEFA, as well as other international sports federations outside of football. For that reason, Swiss law is an increasingly important facet of international sports law. WISE Vol. 2, *supra* note 63, at 1412. Therefore, counsel for CAS cases "should in preparation for the CAS arbitration, research not only CAS arbitration rules and prior CAS rulings, but also Swiss law on several issues (substantive law, treaties, arbitration law, conflict of law rules, etc.)." *Id.* at 1413; see also FIFA STATUTES, *supra* note 58, art. 66; CAS STATUTES, *supra* note 111, art. R45.

¹⁴⁷ Reilly, *supra* note 112, at 75.

¹⁴⁸ 20 *Questions About the CAS*, TAS / CAS, <http://www.tas-cas.org/en/20questions.asp/4-3-231-1010-4-1-1/5-0-1010-13-0-0/> (last visited Oct. 6, 2014).

¹⁴⁹ WISE Vol. 2, *supra* note 63, at 1414.

¹⁵⁰ These "conflicts of interest" were not specified. *Mohamed Bin Hammam Resigns from Football, Banned for Life*, FIFA.COM (Dec. 17, 2012), <http://www.fifa.com/aboutfifa/organisation/news/newsid=1973422/>; *FIFA Issues New Life Ban to Ex-co Member Mohamed Bin Hammam*, GUARDIAN (Dec. 17, 2012) [hereinafter *FIFA Issues New Life Ban*], <http://www.theguardian.com/football/2012/dec/17/fifa-life-ban-mohamed-bin-hammam>.

¹⁵¹ Agence France-Presse, *Court of Arbitration for Sport Turns Down Mohamed Bin Hammam's Appeal*, NDTV SPORTS (Oct. 31, 2012), <http://sports.ndtv.com/football/news/198688-court-of-arbitration-for-sport-turns-down-mohamed-bin-hammams-appeal>.

¹⁵² *FIFA Ban Mohamed Bin Hammam for Life After He Quits Football*, BBC (Dec. 17, 2012), <http://www.bbc.com/sport/0/football/20762363>.

¹⁵³ *FIFA Issues New Life Ban*, *supra* note 149.

As demonstrated by the Bin Hammam case, a party has the following three options if it wants to challenge the decision to move the 2022 Qatar World Cup to winter, or FIFA's original decision to award the tournament to Qatar: the internal tribunals of FIFA, the CAS, or the Swiss courts.¹⁵⁴ The remainder of this Comment explores what a hypothetical case against FIFA would look like and what the result would likely be given past case law, current regulations, and general sports law.

IV. PURSUING A CASE

The remainder of this Comment creates and discusses a hypothetical case against FIFA that a party could bring regarding the shift of the 2022 Qatar World Cup tournament to winter, given the structure of FIFA and the previously discussed remedies available to allegedly aggrieved parties. There are two distinct issues that could provide sufficient cause for a complaint. First, the case could be based on the shifting of the tournament to winter, the ensuing implications to professional leagues whose schedules would be disrupted by the shift, and the financial detriment to professional football leagues, clubs, broadcasters, and other business partners. Second, the case could be based on FIFA's original decision to award the tournament to Qatar and the surrounding allegations of bribery, corruption, and political collusion by FIFA officials during the voting process.

The best party to pursue a case against FIFA for the decision to award the 2022 World Cup to Qatar is one of the national associations that is a direct member of FIFA, as opposed to a football league or club that is an indirect member and thus has less power.¹⁵⁵ The U.S. Soccer Federation or the American Football Association would both be appropriate parties.¹⁵⁶

¹⁵⁴ The Swiss courts would be a court of last resort in this case. They have previously ruled in *Cañas v. ATP Tour* that parties participating in sports organizations "whose rules provide for recourse to arbitration will not have any choice but to accept the arbitral clause." Tribunal fédéral [TF] [Federal Supreme Court] Mar. 22, 2007, 133 ARRÊTS DU TRIBUNAL FÉDÉRAL SUISSE [ATF] III 235 (Switz.), translated in 1 SWISS INT'L ARB. L. REP. 65, 84–85 (cited in Matthew J. Mitten, *Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations*, 10 PEPP. DISP. RESOL. L.J. 51, 53 (2009)). This lack of options is why the Swiss courts have the right to review decisions made after CAS appeals from those organizations. *Id.*

¹⁵⁵ "Within FIFA, it is only the football associations that are members of the football governing body. However, there are other persons and entities who do not have membership but who can be directly affected by the decisions of FIFA, given that they belong to 'sub-associations' within the structure of football. This is the case with leagues, clubs, players, and licensed match and players' agents, which are regarded as 'indirect' members. For this reason, it is considered that they have the legitimacy to contest the decisions of FIFA that directly affect them, in the same manner that this is possible for the actual members." LUCK, *supra* note 51, at 9–10.

¹⁵⁶ The Football Association is the national association of England. FA, *supra* note 54. The FA is just one of many European associations that would be an appropriate party. The FA's failed bid for the 2018 World Cup for England, which created some bitterness, could be potential motivation for the case. See, e.g., Joe Prince-Wright, *Did FIFA Intentionally Derail England's 2018 World Cup Bid?*, NBC SPORTS (Oct. 2, 2013), <http://prosoccertalk.nbcsports.com/2013/10/02/did-fifa-intentionally-derail-englands-2018-world-cup-bid/>.

An individual league or club would also be potential parties, as they would have a financial stake in the decision to move the 2022 Qatar World Cup to winter. As direct or indirect members of FIFA, any of these parties could have standing to bring either complaint to the internal FIFA judicial bodies to begin a case against FIFA.¹⁵⁷

A. FIFA

The first venue to take a case involving football would be FIFA itself through either of these judicial bodies: the Disciplinary Committee or the Ethics Committee.¹⁵⁸ However, the FIFA Statutes dictate that both of these judicial bodies are only qualified to sanction certain parties.¹⁵⁹ Neither judicial body has the power to sanction the Executive Committee, the FIFA body responsible for voting on the location of the World Cup.¹⁶⁰ The judicial bodies may be able to sanction individual officials on the Executive Committee for misconduct, but they seemingly cannot take action against the committee as a whole for awarding the tournament to Qatar.

Even if either the Disciplinary Committee or the Ethics Committee reprimanded the members of the Executive Committee who were involved in politically motivated collusion¹⁶¹ during the vote, it does not necessarily mean that the vote would be reversed or retaken. The Disciplinary Code does allow for “return of awards” as a sanction,¹⁶² but it is not clear whether granting tournament hosting rights is considered an award. Nor is it likely that Qatar could lose the award of hosting rights due to the misconduct of the officials of either the Executive Committee or the Qatar Football Association. One reason is that the Ethics Committee has already

¹⁵⁷ Given the weight of power in FIFA and the lack of precedent, it may be unlikely for any case to be brought against FIFA, especially if the party bringing the case takes the standard route of first bringing the case to FIFA’s internal bodies. However, the extreme public opinion against FIFA on the matter could lead to some action being taken. It is enough of a possibility that Qatari officials are preparing for legal action to prevent a re-vote. Richard Farley, *BBC Reports Qatari Officials Considering Legal Action Over Potential 2022 Re-vote*, NBC SPORTS (June 5, 2014), <http://prosoccertalk.nbcsports.com/2014/06/05/bbc-reports-qatari-officials-considering-legal-action-over-potential-2022-re-vote/>.

¹⁵⁸ The Ethics Committee, as the party with the specific responsibility to reprimand the Executive Committee for breaches of conduct, would likely be the more appropriate choice, although both seem like possible options. See Rassel, *supra* note 11, at 805.

¹⁵⁹ FIFA STATUTES, *supra* note 58, art. 62(2) (“The Disciplinary Committee may pronounce the sanctions described in these [s]tatutes and the FIFA Disciplinary Code on [m]embers, [c]lubs, [o]fficials, [p]layers and match and players’ agents.”). *Id.* art. 63(2) (“The Ethics Committee may pronounce the sanctions described in these [s]tatutes, the FIFA Code of Ethics and the FIFA Disciplinary Code on [o]fficials, [p]layers and match and players’ agents.”).

¹⁶⁰ *Id.* art. 63(2).

¹⁶¹ See, e.g., Pelso, *supra* note 21; *World Cup – Blatter Blames France, Germany for Qatar Choice*, *supra* note 11.

¹⁶² FIFA DISCIPLINARY CODE, *supra* note 67, arts. 10, 16.

admitted that it has no power to remove the hosting rights from Qatar regardless of its findings on ethical breaches of conduct.¹⁶³ The third judicial body of FIFA, the Appeal Committee, can only review decisions by the Disciplinary Committee or the Ethics Committee, and even then it is limited to decisions “that are not declared final by the relevant FIFA regulations.”¹⁶⁴ The most likely place for the case to be heard would be the Ethics Committee because it has power over Executive Committee officials, and a successful case would likely rest on the grounds of breach of ethics by individual officials.

A case brought in front of FIFA to remove the 2022 World Cup from Qatar could claim corruption by any number of members of the Executive Committee during the decision-making process leading up to the vote for the hosting rights for the 2018–2022 tournaments.¹⁶⁵ As mentioned in Part II of this Comment, the alleged actions of the Executive Committee members may have been in breach of the following articles of the FIFA Code of Ethics: Article 13 (general rules of conduct),¹⁶⁶ Article 14 (duty of neutrality),¹⁶⁷ Article 19 (conflicts of interest),¹⁶⁸ and Article 21 (bribery and corruption).¹⁶⁹ If a party brought these issues to the investigatory chamber of the Ethics Committee, that chamber would decide whether to file a report against the individuals involved. If so, the case could move to the adjudicatory chamber of the Ethics Committee.¹⁷⁰

Because any kind of proof is admissible to the Ethics Committee,¹⁷¹ parties could bring any of the evidence or witnesses used in the media’s widespread allegations of corruption and bribery. The adjudicatory chamber will have “absolute discretion” regarding proof and will be held to

¹⁶³ *FIFA’s Ethics Committee Has ‘No Power’ to Remove World Cup 2022 from Qatar Even If Bribes Took Place*, *supra* note 27.

¹⁶⁴ FIFA STATUTES, *supra* note 58, art. 64(2).

¹⁶⁵ This could include Michel Platini who may have been inappropriately convinced to vote for Qatar by French President Nicolas Sarkozy. Lichfield, *supra* note 18.

¹⁶⁶ FIFA CODE OF ETHICS, *supra* note 69, art. 13(3) (“Persons bound by this [c]ode shall show commitment to an ethical attitude. They shall behave in a dignified manner and act with complete credibility and integrity.”).

¹⁶⁷ *Id.* art. 14 (“In dealings with government institutions, national and international organisations, associations and groupings, persons bound by this [c]ode shall, in addition to observing the basic rules of art. 13, remain politically neutral, in accordance with the principles and objectives of FIFA, the confederations, associations, leagues and clubs, and generally act in a manner compatible with their function and integrity.”).

¹⁶⁸ *Id.* art. 19(2) (“Persons bound by this [c]ode shall avoid any situation that could lead to conflicts of interest. Conflicts of interest arise if persons bound by this [c]ode have, or appear to have, private or personal interests that detract from their ability to perform their duties with integrity in an independent and purposeful manner.”).

¹⁶⁹ *Id.* art. 21(1) (“Persons bound by this [c]ode must not offer, promise, give or accept any personal or undue pecuniary or other advantage in order to obtain or retain business or any other improper advantage to or from anyone within or outside FIFA.”).

¹⁷⁰ *Id.* arts. 61, 69.

¹⁷¹ FIFA DISCIPLINARY CODE, *supra* note 67, art. 96; FIFA CODE OF ETHICS, *supra* note 69, art. 46.

its standard of proof of personal conviction.¹⁷² The chamber will decide on the basis of the file created by the investigatory chamber of the Ethics Committee,¹⁷³ unless one of the parties specifically requests a hearing to give an oral statement.¹⁷⁴ A statute of limitations will not be a problem as bribery and corruption cases are not subject to a limitation period.¹⁷⁵ There have been successful cases of corruption against Executive Committee members in the Ethics Committee (e.g., the Bin Hammam case).¹⁷⁶ Thus, precedent exists for high-ranking members of FIFA to be found guilty of corruption.

However, even if the adjudicatory chamber agrees to hear the case and determines on the basis of the evidence that one or more members of the Executive Committee acted against the FIFA Code of Ethics in the process of voting for the 2022 Qatar World Cup, the issue remains that the internal mechanisms of FIFA currently have no apparent power to reverse the vote or remove hosting rights from Qatar. The Ethics Committee has the power to pronounce sanctions,¹⁷⁷ which are listed in Article 6 of the FIFA Code of Ethics as the following: “warning; reprimand; fine; return of awards; match suspension; ban from dressing rooms and/or substitutes’ bench; ban on entering a stadium; ban on taking part in any football-related activity; [or] social work.”¹⁷⁸ The only possible sanction that could be interpreted as the ability to revoke hosting rights in Qatar would be “return of awards,” but this seems unlikely because “awards” seems to refer to awards within the context of the game of football (i.e., trophies or money) and not the award of something as intangible as tournament hosting rights.¹⁷⁹ Even if the Ethics Committee finds severe breaches of the ethical code by members of the Executive Committee in awarding the 2022 World Cup to Qatar, it

¹⁷² FIFA DISCIPLINARY CODE, *supra* note 67, art. 97.

¹⁷³ FIFA CODE OF ETHICS, *supra* note 69, art. 74(1).

¹⁷⁴ *Id.* art. 74(2).

¹⁷⁵ *Id.* art. 12(2).

¹⁷⁶ This example of success may be mitigated by the fact that Bin Hammam was running against Sepp Blatter in the FIFA presidential election. His public corruption case, subsequent withdrawal from the running, and later permanent ban from football has been suggested by many to be less of a result of FIFA’s dedication to ethical behavior than it is a result of Blatter’s interest in maintaining power. *See, e.g.,* Martin Samuel, *What a Sack of Weasels! Trust No One in This Tawdry Tale of Deceit*, DAILY MAIL ONLINE (May 27, 2011, 9:52 AM), <http://www.dailymail.co.uk/sport/football/article-1391376/FIFA-corruption-Sepp-Blatter-Mohamed-Bin-Hammam—trust-one.html>; Martyn Ziegler, *Mohamed Bin Hammam Claims FIFA President Sepp Blatter Is Untouchable*, INDEP. (Oct. 16, 2012), <http://www.independent.co.uk/sport/football/news-and-comment/mohamed-bin-hammam-claims-fifa-president-sepp-blatter-is-untouchable-8213612.html>.

¹⁷⁷ FIFA CODE OF ETHICS, *supra* note 69, art. 5.

¹⁷⁸ *Id.* art. 6.

¹⁷⁹ The only explanation of the meaning of an “award” in FIFA’s official documents is in the Disciplinary Code: “The person required to return an award shall return the benefits received, in particular sums of money and symbolic objects (medal, trophy, etc.)” FIFA DISCIPLINARY CODE, *supra* note 67, art. 16.

seems that the Ethics Committee will be powerless to do anything other than sanction the offending parties.

Given the lack of power in these judicial bodies to take any meaningful action against the Executive Committee's decision, any attempt to bring a case against FIFA would likely prove unsuccessful. However, it may be a necessary first step to allow for the case to be seen at a higher level, such as CAS or the Swiss Federal Tribunal courts.

B. Court of Arbitration for Sport

The next step would be CAS, if CAS decides that it is able to take the case. If the parties begin with an attempt to bring a case before one of FIFA's judicial bodies and subsequently have a decision issued against them, then CAS should have jurisdiction. In a prior CAS case brought by the national football association of Iran, CAS confirmed that FIFA has standing to be sued in some cases.¹⁸⁰ Therefore, it is possible for a party to sue FIFA directly.

CAS has ruled that there are three baseline requirements for it to be able to arbitrate a case: a decision of a sports federation, agreement for CAS jurisdiction, and exhaustion of internal legal remedies.¹⁸¹ As the FIFA Statutes allow for CAS jurisdiction, the second requirement is met.¹⁸² If the previously discussed case had been taken to FIFA's judicial bodies, the third requirement would also be met. Therefore, the only remaining determination by CAS to ensure its ability to take the case would be to show that the case was based on an official decision made by a party of FIFA.

While a decision of FIFA's judicial bodies against Executive Committee members may be used to meet this appealable decision requirement, the case would be faced with the same challenge of lack of

¹⁸⁰ Football Federation Islamic Republic of Iran (IRIFF) v. FIFA, CAS 2008/A/1708, ¶ 41 (Nov. 4, 2009) ("In the case CAS 2007/A/1329 & 1330, also quoted in case CAS 2008/A/1517, the [p]anel ruled that '(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (*légitimation passive*) if it personally obliged by the 'disputed right' at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192.'"). In this case, FIFA had no standing to be sued because there was insufficient relation between the case at hand and FIFA; any legal remedies would have involved two other parties. CAS upheld the general principle that FIFA would have standing to be sued if there was sufficient connection between FIFA and the subject matter. *Id.* ¶ 48.

¹⁸¹ *Id.* ¶ 1.

¹⁸² FIFA STATUTES, *supra* note 58, art. 66(1) ("FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, [m]embers, [c]onfederations, [l]eagues, [c]lubs, [p]layers, [o]fficials and licensed match agents and players' agents."). All national associations under FIFA must recognize the jurisdiction of CAS as well. *Id.* art. 68(1) ("The [c]onfederations, [m]embers and [l]eagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated [p]layers and [o]fficials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players' agents.").

remedy as it was at the internal level. If the case is based on the allegations of bribery of FIFA officials in making the decision to award hosting rights to Qatar, the case will have to consider the precedent in the Bin Hammam case. If the panel can determine to its comfortable satisfaction that (1) the FIFA officials of the Executive Committee (2) offered gifts or inducements (3) to third parties (4) to gain an advantage in the process of awarding the hosting rights to Qatar, it could rule that improper bribery occurred. While the Bin Hammam case dealt with offering bribes, rather than accepting them (as would likely be primarily the case here, given the allegations), the FIFA Code of Ethics includes accepting bribes in the bribery and corruption prohibition.¹⁸³ Even if CAS finds that Executive Committee officials were guilty of bribery and corruption, remedies would likely be against them personally rather than against FIFA or the decision to allow Qatar to host the 2022 World Cup.¹⁸⁴

The party's only real hope would be to appeal Qatar's right to host the World Cup directly or the right of FIFA to move the tournament dates, instead of simply punishing Executive Committee members involved in bribery in the voting process. Therefore, the party must make an argument that the Executive Committee's vote granting Qatar hosting rights counts as a decision that is appealable by CAS.¹⁸⁵ No precedent exists for this kind of decision against a vote by the Executive Committee,¹⁸⁶ but it is possible that the level of corruption alleged against the Executive Committee as a whole could lead to CAS accepting the case on these terms. If CAS accepts a case against FIFA or the Executive Committee as a whole, the arbitration panel "may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance."¹⁸⁷

In a case between football clubs AEK Athens and SK Slavia Prague, and UEFA, the European football confederation, CAS discussed which parties might bring a claim against sports federations and whether the decisions of those federations are completely independent or not.¹⁸⁸ The

¹⁸³ FIFA CODE OF ETHICS, *supra* note 69, art. 21(1).

¹⁸⁴ Samuel Morris, Comment, *FIFA World Cup 2022: Why the United States Cannot Successfully Challenge FIFA Awarding the Cup to Qatar and How the Qatar Controversy Shows FIFA Needs Large-Scale Changes*, 42 CAL. W. INT'L L.J. 541, 554 (2012).

¹⁸⁵ CAS has previously noted that "FIFA's Statutes and regulations contain no general definition of what must be considered a 'final' decision." *Aris FC v. FIFA*, CAS 2007/A/1251, ¶ 8 (July 27, 2007). This ambiguity could be used in favor of a party arguing that an award of a World Cup is an appealable decision.

¹⁸⁶ Morris, *supra* note 183, at 554.

¹⁸⁷ CAS STATUTES, *supra* note 109, art. R57. The arbitration panel "has full power to review the facts and the law." *Id.*

¹⁸⁸ *AEK Athens (Greece) and SK Slavia Prague (Czech Republic) v. Union of European Football Associations (UEFA)*, CAS 98/200, ¶ 50 (Aug. 20, 1999) ("Article 75 CC provides that a resolution taken by an organ of an association which contravenes the law or the association statutes can be

court mentioned that some decisions would be subject to laws outside of the sports realm and some would not. It determined the following:

A sporting rule should pass the following tests in order not to be caught by EC law: (a) it must concern a question of sporting interest having nothing to do with economic activity, (b) it must be justified on non-economic grounds, (c) it must be related to the particular nature or context of certain competitions, and (d) it must remain limited to its proper objective.¹⁸⁹

Considering this statement, it seems that higher scrutiny will be placed on decisions of sports federations if those decisions affect matters beyond the sports realm. Given the financial nature of hosting a World Cup tournament,¹⁹⁰ it would be difficult to argue that the award was made purely from a sporting standpoint. The financial aspects of the World Cup hosting award would therefore make a case more likely to succeed if it is based on the financial implications of the decision to move the tournament to winter.

The AEK Athens arbitration panel also discussed the importance of integrity and ethical decision making in sports. The panel asserted that “the notion of integrity as applied to football requires something more than mere honesty and uprightness, both from a sporting and from a business point of view.”¹⁹¹ The panel also emphasized the importance of public perception of the integrity of the game:

[F]ootball must preserve its great strength in business terms: the enormous hold which individual clubs have over the loyalty of their supporters. This makes the game attractive to advertisers, sponsors, television and so on. Maintaining that loyalty is not being sentimental; being responsive to spectator concerns is simply good business. That means, amongst other things, *being*

judicially challenged by any member of the association who has not approved it.”). The panel also noted that “a sports-governing organization such as an international federation must comply with certain basic principles of procedural fairness *vis-à-vis* the clubs or the athletes, even if clubs and athletes are not members of the international federation.” *Id.* ¶ 61.

¹⁸⁹ *Id.* ¶ 82.

¹⁹⁰ As one of the largest international sporting events in the world, the tournament has serious financial implications, especially in industries such as infrastructure development, tourism, and hospitality. Singh, *supra* note 46.

¹⁹¹ AEK Athens, CAS 98/200, ¶ 25. The panel supported this claim by noting the following: Several witnesses have stated that the highest standards are needed for the integrity of the game (Mr. Taylor), that the integrity of sports is crucial to the sports consumer (Professor Weiler), and that «*football can only continue to be successful if it is run according to the highest standards of conduct and integrity, both on and off the field*» (Sir John Smith).

Id. ¶ 23.

*able to reassure supporters that the game is straight.*¹⁹²

This concern over public perception of the integrity of the game would surely work in favor of an aggrieved party. The perception of FIFA has been vastly negative due to the Qatar decision and the bribery scandal surrounding it, as well as other unrelated instances of bribery in FIFA.¹⁹³ If the panel were to determine to its comfortable satisfaction that the Executive Committee made an appealable decision based on non-sporting matters, it may rule that the vote for Qatar to host the 2022 World Cup or the decision to move the tournament to winter violates the FIFA Code of Ethics.

Nonetheless, the fact remains that a vote of the Executive Committee may not be appealable to CAS, and even if it is, there is no current remedy to change an Executive Committee decision. CAS may have the power to punish individuals involved in bribery, but there is currently no remedy that allows a vote to be retaken.¹⁹⁴ CAS may therefore be unwilling to force FIFA to award the hosting rights to another nation, and if this is the case, the move to winter may be inevitable given the seeming impossibility of hosting the tournament in the summer.

C. Swiss Federal Tribunal

The final resort of a party wishing to sue FIFA would be a Swiss court, which might be the judicial body least likely to hear the case because of the general unlikelihood of the Swiss courts overturning any decision made by CAS.¹⁹⁵ However, if a Swiss court accepts the case, it is more likely that the decision will sway in the party's favor, particularly in a case regarding the shift to a winter tournament because that would be a decision with effects outside of the realm of the game.

Swiss courts may also be the most likely to forego the requirement of exhaustion of internal remedies at FIFA—"a]rguably, where the governing body's internal appeal organs do not fulfill the requisites of a genuine, impartial panel meeting due process requirements regarding its composition, procedure, etc., or where exhaustion would be inequitable or futile, exhaustion of internal governing body remedies is not required by

¹⁹² *Id.* ¶ 27.

¹⁹³ *See* Dorsey, *supra* note 20.

¹⁹⁴ Morris, *supra* note 183, at 554.

¹⁹⁵ *Id.* at 559–60 ("The SFT will vacate an arbitration award only if the CAS panel was 'constituted irregularly, erroneously held that it did or did not have jurisdiction, ruled on matters beyond the submitted claims, or failed to rule on a claim,' or if 'the parties are not treated equally by the CAS panel, if a party's right to be heard is not respected, or if the award is incompatible with Swiss public policy.'"). *See also* Mitten, *supra* note 153.

Swiss courts.”¹⁹⁶ A party may be able to argue that pursuing a decision against the Executive Committee of FIFA in FIFA’s judicial bodies would be futile.

The major consideration in allowing sports cases to be heard in Swiss courts is whether the decision that is being appealed was made on the basis of “game rules (*Spielregel*)” or “legal rules (*Rechtsregel*).”¹⁹⁷ Swiss courts will only consider cases based on legal rules; they consider game rules outside of their jurisdiction. A game rule has been described as “any disadvantage or penalty imposed which directly relates to the game or competition in course and does not extend beyond the competition or game.”¹⁹⁸

Due to sports federations’ right to autonomy, Swiss courts will refrain from regulating the affairs of the governing body if it followed its own rules, “*but for other, sometimes over-weighing principles.*”¹⁹⁹ These outweighing principles tend to be those of fairness—“Swiss courts have held that when the personal civil rights of someone are violated by a sports governing body, they will come to their aid – civil rights protection will prevail.”²⁰⁰ These personal civil rights can, in some cases, be attached to legal persons,²⁰¹ which would include national associations or other parties that might bring the case against FIFA. The party could assert that, in awarding the tournament to Qatar and shifting it to the winter months, FIFA would violate the rights of professional leagues to freely pursue their economic endeavors or chosen line of work.²⁰² If the parties can convincingly make the argument that a winter shift prevents the professional leagues and the players therein from freely pursuing their work, they may be able to succeed at the Swiss courts. However, considering the extreme infrequency of sports law cases in this jurisdiction,²⁰³ it is unlikely that the case would be seen at all.

¹⁹⁶ WISE Vol. 2, *supra* note 63, at 1420.

¹⁹⁷ *Id.* at 1415. “A growing number of legal writers have criticized [the game rules/legal rules] approach, most critics preferring to abandon it and apply a balancing test between the individual interests of an athlete, team, etc. [o]n the one hand, and the overall interests of the sports organization, on the other. That, in fact, is what the Swiss courts do anyway, except that in the process, they generally also utilize [the game rules/legal rules] approach in their analysis.” *Id.* at 1419.

¹⁹⁸ *Id.* at 1416.

¹⁹⁹ *Id.* at 1417.

²⁰⁰ *Id.*

²⁰¹ *See, e.g.*, WISE Vol. 2, *supra* note 63, at 1445 (discussing the *S.A. Olympique de Marseilles v. UEFA* case).

²⁰² WISE Vol. 2, *supra* note 63, at 1418.

²⁰³ This will be especially unlikely if the case has already gone through the FIFA and CAS courts. As of 2009, the Swiss Courts have never overturned a CAS decision on the merits of the case, although they have left open the option to do so if the decision goes against Swiss public policy. Mitten, *supra* note 153, at 58.

V. CONCLUSION

Despite the potential damage to professional leagues and their financial partners, it is likely that the hosting rights to the 2022 World Cup will remain with Qatar and the tournament will take place in the winter of that year unless (1) the Executive Committee decides otherwise very soon, which it has repeatedly asserted that it will not do,²⁰⁴ or (2) successful legal action can be brought against the Executive Committee's decision (unlikely). While this will cause significant problems in the footballing and sports business community, there are insufficient legal remedies inside and outside of FIFA for national football associations or other potentially injured parties.

²⁰⁴ See, e.g., *Blatter Reaffirms 2022 World Cup Will Remain in Qatar*, LONDON S.E. (Feb. 19, 2014, 10:18 AM), http://www.lse.co.uk/AllNews.asp?code=wj1is4nr&headline=Blatter_reaffirms_2022_World_Cup_will_remain_in_Qatar; *World Cup 'Will Stay in Qatar'*, FOX SOCCER (Oct. 10, 2013), <http://msn.foxsports.com/foxsoccer/worldcup/story/fifa-spokesman-says-2022-world-cup-will-stay-in-qatar-100313>.