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Has the International Olympic Committee Risen Above Corruption?

BRIGIDA BENITEZ & JOHN LONDON[†]

INTRODUCTION

International sports provide a fertile ground for corruption – billions of dollars in revenues at stake, competition among cities for hosting privileges that can result in substantial proceeds and resources, a lack of transparency in decision-making, and public officials in the midst of it all. Rising above corruption can seem like a formidable feat.

The investigations and resulting criminal proceedings and litigation related to alleged corruption perpetrated by executives at the Fédération Internationale de Football Association (“FIFA”) highlight the risk of corruption in international sports. In May 2015, the United States indicted fourteen former FIFA officials with a variety of charges, including racketeering, money laundering, and wire fraud.¹ After the indictment, an independent investigation conducted by FIFA’s counsel revealed a coordinated effort by three former top officials to corruptly enrich themselves with over 79 million Swiss francs in the last five years using excessive salaries, World Cup bonuses, and other incentives.²

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1. Office of Pub. Aff., *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, DEPT. OF JUST. (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

2. FIFA, *Attorneys for FIFA Provide Update on Internal Investigation and Details on*

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More recently, in November 2016, the former governor of Rio de Janeiro, was arrested on corruption charges for allegedly taking bribes in connection with public construction projects, including the renovation of the Maracanã Stadium before the 2014 FIFA World Cup and 2016 Olympic Games.³

The opportunity for corruption within international sports organizations is hardly surprising: the amount of money generated by the largest sporting events can be staggering. The 2014 World Cup in Brazil generated \$4.8 billion in revenue for FIFA, with \$2.2 billion in expenses.⁴ In addition, revenue and brand recognition can create bad incentives for corporate partners. For example, two sports marketing companies associated with FIFA were convicted of criminal wrongdoing and agreed to forfeit over \$190 million,⁵ and prosecutors reportedly are investigating subsidiaries of DirecTV and Fox for allegedly bribing soccer officials to acquire broadcast rights for soccer tournaments.⁶ Notably, however, FIFA is not the largest international sporting organization, nor is the World Cup the most recognizable recurring sporting event.

The International Olympic Committee (“IOC”) describes the Olympic Games as the world’s biggest sporting event and the Olympic rings as one of the most widely recognized symbols in the world.⁷ Outlays to host the Olympic Games are enormous for the host cities, and revenues are on par or higher than those collected by FIFA.⁸ As noted in more detail below, the IOC has embarked on a number of reforms to increase its commitment to good governance

Compensation for Former Top Officials, FIFA.COM (June 3, 2016), <http://www.fifa.com/governance/news/y=2016/m=6/news=attorneys-for-fifa-provide-update-on-internal-investigation-and-detail-2799851.html>.

3. Vinod Sreeharsha, *Sergio Cabral, Ex-Governor of Rio de Janeiro, Arrested on Corruption Charges*, N.Y. TIMES (Nov. 17, 2016), <https://www.nytimes.com/2016/11/18/world/americas/sergio-cabral-rio-governor-corruption.html>.

4. Tony Manfred, *FIFA Made an Insane Amount of Money Off of Brazil’s \$15 Billion World Cup*, BUS. INSIDER (Mar. 20, 2015), <http://www.businessinsider.com/fifa-brazil-world-cup-revenue-2015-3>.

5. Office of Pub. Aff., *Sixteen Additional FIFA Officials Indicted for Racketeering Conspiracy and Corruption*, DEPT. OF JUST. (Dec. 3, 2015), <http://www.justice.gov/opa/pr/sixteen-additional-fifa-officials-indicted-racketeering-conspiracy-and-corruption>.

6. *See id.*

7. Int’l Olympic Comm’n, *2015 Annual Report* at 36 (Aug. 2, 2016), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/IOC-Annual-Report/IOC-Annual%20Report-2015.pdf>.

8. *See id.* at 128, 130 (noting that the 2013–2016 Olympiad produced \$5.6 billion in revenue and \$1.374 billion was distributed to London for the 2012 Olympic Games).

and ethics, but corruption allegations still swirl around bids for the 2016 and 2020 Summer Olympic Games.⁹ The IOC operates in an industry that presents risks for corruption, routinely deals with public officials, and often conducts its business in countries perceived to have high levels of corruption. As such, the IOC is expected to maintain an effective compliance program to prevent and detect potential misconduct.

This Article examines the IOC's rules and procedures to determine their adequacy in addressing potential corruption. To that end, we first explore the structure of the IOC and its history of corruption scandals. The Article then focuses on the changes that the IOC has made over the years to its policies and procedures in an effort to address corruption risks. We then describe international guidance for best practices in the design of a robust anti-corruption compliance program. Finally, the Article examines potential gaps in the IOC's policies and procedures that leave it vulnerable to corruption.

I. THE INTERNATIONAL OLYMPIC COMMITTEE

A. *Structure and Governance of IOC*

The IOC is a Swiss non-profit non-governmental organization subject to suit by both member nations and individuals.¹⁰ It has been sued by both. For example, Kuwait sued the IOC in Switzerland for one billion dollars in damages due to the suspension of its national Olympic teams,¹¹ and U.S. Olympian Justin Reiter unsuccessfully sued the IOC in Switzerland to overturn its decision to remove Parallel Giant Slalom snowboarding racing from the Winter Olympics.¹²

The IOC is the highest level of governance in international

9. See Hugo Lowell, *France Launches Corruption Investigation into Bid Processes for 2016 & 2020 Olympics*, EURONEWS (Feb. 3, 2016), <http://www.euronews.com/2016/03/02/ioc-says-no-evidence-of-corruption-in-olympic-bidding-despite-new-french>.

10. Int'l Olympic Comm., *Olympic Charter* Rule 15 at 31 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

11. *Kuwait Sues IOC for \$1 Billion over Olympic Ban*, REUTERS (June 23, 2016), <http://www.reuters.com/article/us-olympics-kuwait-idUSKCN0Z91KI>.

12. Jason Blevins, *Steamboat Olympian Justin Reiter Abandoning Lawsuit Against IOC*, DENV. POST (last updated Nov. 25, 2016), <http://www.denverpost.com/2016/05/24/steamboat-olympian-justin-reiter-lawsuit-ioc/>.

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sports. The IOC sets policies with respect to the Olympic Games, and two other groups of organizations are beneath it: National Olympic Committees (“NOC”) and International Sports Federations (“IF”). The NOCs are responsible for fielding Olympic teams from each nation and determining which cities in their respective countries may apply to organize the Olympic Games.¹³ The IFs are non-governmental organizations recognized by the IOC as the governing bodies for their respective sports.¹⁴ For example, FIFA is the IF responsible for the development of international soccer.¹⁵ IFs monitor and enforce the integrity of their respective sports, organize separate international events and competitions, and manage their events at the Olympic Games.¹⁶ The National Federations for individual sports are affiliated with the IFs.¹⁷

The IOC is also responsible for working with the Organizing Committees for the Olympic Games (“OCOG”), which is organized and supervised by the NOC of the host country. The OCOG is responsible for, among other things, building or updating facilities and venues for all competitions, acquiring lodging and adequate medical facilities for athletes, ensuring adequate transportation is available for the Olympic Games, and organizing cultural events and celebrations.¹⁸

The highest body of the IOC is the Session, which is the general meeting of all IOC members.¹⁹ The Session meets once per year and is the only body entitled to select the host city for the Olympic Games.²⁰ Decisions at the Session are made by majority vote, and half of the IOC members are required to be in attendance for

13. Int’l Olympic Comm., *Olympic Charter* Rule 27 at 60 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

14. *International Sports Federations*, INT’L OLYMPIC COMM., <https://www.olympic.org/ioc-governance-international-sports-federations> (last visited Jan. 22, 2017).

15. FIFA, *Who We Are*, FIFA.COM, <http://www.fifa.com/about-fifa/who-we-are/index.html> (last visited Jan. 22, 2017).

16. *International Sports Federations*, INT’L OLYMPIC COMM., <https://www.olympic.org/ioc-governance-international-sports-federations> (last visited Jan. 22, 2017).

17. *Id.*

18. *Organizing Committees for the Olympic Games*, INT’L OLYMPIC COMM., <https://www.olympic.org/ioc-governance-organising-committees> (last visited Jan. 22, 2017).

19. Int’l Olympic Comm., *Olympic Charter* Rule 18 at 42 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

20. *Id.*

quorum.²¹ IOC members are selected by current members through the Members Election Commission, previously the Nominations Commission.²² The number of Members is capped at 115.²³ Of the IOC members, fifteen are active athletes elected during the Olympic Games, fifteen are reserved for executives or senior leaders from IFs, and fifteen are reserved for executives or senior leaders from world or continental associations of the NOCs.²⁴ IOC members are elected for a term of eight years with no limits on subsequent terms.²⁵ If a member is elected after 1999, then there is an age limit of seventy years old.²⁶

General governance of the IOC is managed by the Executive Board, which consists of the President, four Vice Presidents, and ten general members.²⁷ The Executive Board is elected by secret ballot at the Session to a four-year term.²⁸ The Executive Board is responsible for management of the IOC's finances, publication of the Annual Report, the internal rules and regulations of the IOC, decisions regarding the reelection of existing IOC members, and appointment of the IOC Director General.²⁹

21. Int'l Olympic Comm., *Olympic Charter* Rule 18.3 at 42–43 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.45768612.1479793253.1487346201.

22. Int'l Olympic Comm., *Olympic Charter* Rule 16.2.3 at 38 – 39 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.45768612.1479793253.1487346201.

23. Int'l Olympic Comm., *Olympic Charter* Rule 16.1.1 at 32 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.45768612.1479793253.1487346201.

²⁴ 2015 Annual Report, *supra* note 7, at 68–69.

25. *Id.* at 68

26. Int'l Olympic Comm., *Olympic Charter* Rules 16.3.3.1; 16.2.6.1 at 34; 40 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

27. Int'l Olympic Comm., *Olympic Charter* Rule 19.1 at 45 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

28. *See IOC Executive Board*, Int'l Olympic Comm., <https://www.olympic.org/executive-board> (last visited Jan. 22, 2017); *see also* Int'l Olympic Comm., *Olympic Charter* Rule 20.1 at 48 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175 (stating the President has an eight-year term with a potential four-year extension).

29. *See IOC Executive Board*, Int'l Olympic Comm., <https://www.olympic.org/executive-board>; *see also* Int'l Olympic Committee, *Olympic Charter* Rule 19.3 at 45–46 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

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The IOC Director General is responsible for the administration of the IOC, under the authority of the President.³⁰ The Director General is based in Lausanne, Switzerland and conducts the day-to-day work of the IOC.³¹ The IOC had 521 full-time employees at the end of 2015 and runs a number of programs in collaboration with the United Nations meant to further develop international sport across different cultures.³²

B. Revenues and Expenditures of the IOC

The IOC generates revenue by promoting and hosting the Olympic Games. During each cycle, called an Olympiad, the Olympic Games generate billions of dollars in revenue from a variety of sources.³³ For example, projected revenue from the 2013–2016 Olympiad was \$5.6 billion.³⁴ Broadcast rights for the Olympics accounted for 74% of total revenue during that time, while Olympic sponsorships generated an additional 18%.³⁵ Olympic sponsorships are distributed through The Olympic Partners (“TOP”) program, which assigns sponsorships throughout the four-year period.³⁶ During the 2013–2016 cycle, the TOP program raised over one billion dollars.³⁷

The IOC distributes 90% of the revenue from the Olympics to its subsidiary organizations, including NOCs and IFs.³⁸ The NOCs and IFs received \$520 million respectively after the 2012 Summer Olympic Games in London.³⁹ Moreover, a significant portion of the revenues are provided to the OCOG to defray costs associated with hosting the Olympic Games. For instance, the IOC distributed \$1.250 billion to Beijing for the 2008 Summer Olympics and \$1.374 billion to London for the 2012 Summer Olympic Games.⁴⁰ The remaining ten percent of revenue is used to support IOC operations and fund IOC programs for the development and promotion of

30. *2015 Annual Report*, *supra* note 7, at 52.

31. *Id.*

32. *Id.* at 52, 97.

33. *Id.* at 126 – 129.

34. *Id.* at 128

35. *Id.*

36. *Id.*; see also *The TOP Dogs of Olympic Sponsorship*, ALL BUSINESS, <https://www.allbusiness.com/the-top-dogs-of-olympic-sponsorship-13903444-1.html>.

37. *2015 Annual Report*, *supra* note 7, at 128.

38. *Id.* at 129–31.

39. *Id.* at 130–31.

40. *Id.* at 130.

international sport, which are administered by the Director General.⁴¹

The cost of hosting the Olympic Games has risen dramatically in recent years, with Brazil estimated to have spent as much as \$4.6 billion for the 2016 Summer Olympic Games in Rio de Janeiro.⁴² Host cities have generally viewed the high economic and capital costs to host the Olympic Games as an opportunity to induce economic development and gain international recognition. For instance, the IOC touted the establishment of Australia's first large-scale urban water recycling system and the restoration of 160 hectares of "badly degraded land" in Sydney as long-term benefits from the 2000 Summer Olympic Games.⁴³ Given the increasingly high costs, however, a number of cities, including Rome and Boston, have withdrawn applications to host the 2024 Olympic Games, limiting the availability of host cities for future games.⁴⁴ The IOC has sought to curb the increasing costs of the games, making sustainability one of the three pillars of the Olympic Agenda 2020.⁴⁵

C. Past Scandals and Corruption Risk

The selection of the host city is a crucial process for the IOC because the IOC generates all of its revenue by promoting, licensing and hosting the Olympic Games. Thus, corruption in the process of selecting a host city and planning the games is a pernicious risk to the organization. Scrutiny of corruption related to host-city bidding began after members of the Salt Lake City Olympic Organizing Committee were alleged to have paid IOC members to secure the rights to host the 2002 Winter Games.⁴⁶ Those allegations arose in December 1998, after Marc Hodler—a long-serving IOC member

41. *Id.* at 54, 129.

42. Clay Dillow, *Hosting the Olympics is a Terrible Investment*, FIVETHIRTYEIGHT (Aug. 15, 2016, 11:35 AM), <http://fivethirtyeight.com/features/hosting-the-olympics-is-a-terrible-investment/>.

43. Int'l Olympic Comm., *Sydney Still Reaping Benefits of Hosting Olympic Games 2000* (Aug. 20, 2016), <https://www.olympic.org/news/sydney-still-reaping-benefits-of-hosting-olympic-games-2000>.

44. See Andy Bull, *Revised: The Biggest Threat to the Future of the Olympic Games*, GUARDIAN (July 27, 2016), <https://www.theguardian.com/sport/2016/jul/27/biggest-threat-future-olympic-games-rio-2016-ioc-thomas-bach-hosts>; *Rome to Pull Out of Olympics 2024 Bid on Cost Grounds*, SKY NEWS (Sept. 22, 2016), <http://news.sky.com/story/rome-set-to-pull-out-of-olympics-2024-bid-on-cost-grounds-10586903>; Hayden Bird, *The Life and Death of Boston's Olympic Bid*, BOSTON.COM (Aug. 4, 2016), <https://www.boston.com/sports/sports-news/2016/08/04/the-life-and-death-of-bostons-olympic-bid>.

45. 2015 Annual Report, *supra* note 7, at 62.

46. See Thomas A. Hamilton, *The Long Hard Fall from Mount Olympus: The 2002 Salt Lake City Olympic Games Bribery Scandal*, 21 MARQ. SPORTS L. REV. 219, 221–24 (2010).

and lawyer in Switzerland—alleged that five to seven percent of the votes to select host cities were arranged by bribes through agents.⁴⁷ At roughly the same time, a Salt Lake City newspaper published a leaked document purporting to show that members of the city’s bid team created a scholarship fund for relatives of IOC members.⁴⁸ As a result of an IOC investigation, ten members were expelled or resigned and ten members were sanctioned.⁴⁹ The IOC declined to sanction members of the Salt Lake Organizing Committee because it punished the responsible IOC Members.⁵⁰ However, in July 2000, U.S. prosecutors indicted the former President and Vice President of the Organizing Committee for allegedly offering and paying one million dollars to influence the votes of more than a dozen IOC members and falsifying the books of the Organizing Committee to hide the conduct.⁵¹ Neither was convicted.⁵²

Further investigation of the Salt Lake City allegations by the IOC led to the revelation that corruption in the selection and bidding process was widespread, and potentially had been so for decades.⁵³ For example, reports stated that an Australian official paid \$70,000 for the votes of two African IOC Members, which resulted in the award of the 2000 Summer Olympic Games to Sydney,⁵⁴ and Richard Pound, the Vice President responsible for investigating misconduct related to the Salt Lake City bid, stated that he previously had been

47. See Stephen Wilson, *Olympic Corruption Whistleblower Dies*, WASH. POST (Oct. 18, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/10/18/AR2006101800310_pf.html.

48. *Id.*

49. See Lisa Riley Roche, *IOC Members May Still Face Sanctions*, DESERET NEWS (Aug. 24, 2001), <http://www.deseretnews.com/article/860292/IOC-member-may-still-face-sanctions.html?pg=all>. One of the members passed away. See Thomas A. Hamilton, *The Long Hard Fall from Mount Olympus: The 2002 Salt Lake City Olympic Games Bribery Scandal*, 21 MARQ. SPORTS L. REV. 219, 224 (2010).

50. See Jere Longman, *Olympics; 2 Officials Quit in Salt Lake City As Olympic Scandal Details Grow*, N.Y. TIMES (Jan. 9, 1999), <http://www.nytimes.com/1999/01/09/sports/olympics-2-officials-quit-in-salt-lake-city-as-olympic-scandal-details-grow.html>.

51. Press Release, Dep’t of Just., Former Officials of Salt Lake City Olympic Organizing Committee Indicted for Roles in Olympic Site Selection (July 20, 2000), <https://www.justice.gov/archive/opa/pr/2000/July/413crm.htm>.

52. See Lex Hemphill, *Olympics; Acquittals End Bid Scandal that Dogged Winter Games*, N.Y. TIMES (Dec. 6, 2003), <http://www.nytimes.com/2003/12/06/sports/olympics-acquittals-end-bid-scandal-that-dogged-winter-games.html>.

53. See Marc Fisher & Bill Brubaker, *Privileged World of IOC’s Members Under Scrutiny*, WASH. POST (Jan. 23, 1999), <http://www.washingtonpost.com/wp-srv/digest/daily/jan99/ioc23.htm>; Kieran Daley, *Olympic Games: IOC Report Shows “Decades of Bribery”*, INDEP. (Jan. 20, 1999), <http://www.independent.co.uk/sport/olympic-games-ioc-report-shows-decades-of-bribery-1075358.html>.

54. See Fisher & Brubaker, *supra* note 53.

offered a one million dollar bribe from a foreign TV network in exchange for favorable contract terms.⁵⁵ Reports stated that an internal investigation of the IOC bidding procedures found that, in certain circumstances, gifts to IOC members were not reasonable, ordinary or routine, and included gifts such as medical services, college scholarships, jobs, airline tickets, hotel accommodations, and cash.⁵⁶

II. IOC ANTI-CORRUPTION COMPLIANCE PROGRAM

Following reports of corruption related to Salt Lake City's bid for the Winter Olympics, the IOC implemented a number of reforms that altered the composition, structure and organization of the IOC and addressed some deficiencies in the designation of the host city for the Olympic Games.⁵⁷ As to membership, the IOC implemented an age limit of seventy for members, restricted the total number of members to 115, and created the Nominations Commission (later the Members Election Commission) to add transparency to the process of selecting candidates and electing members.⁵⁸ The IOC also implemented a number of recommendations meant to improve transparency regarding the disbursement of finances, including the disclosure of all allocations of funds to NOCs and IFs and a requirement that all candidate cities disclose sources of funding for bid expenditures for the purpose of conducting audits.⁵⁹ In addition, when signing a contract with the host city, the IOC requires that the host city, host NOC, and OCOG abide by internationally recognized anti-corruption standards by establishing and maintaining an effective compliance program.⁶⁰

55. Steven Pearlstein, *Evidence of Corruption "Irrefutable," IOC Official Says*, WASH. POST (Jan. 21, 1999), <http://www.washingtonpost.com/wp-srv/digest/daily/jan99/oly21.htm>.

56. See A. Craig Copetas & Roger Thurow, *Salt Lake Scandal Draft Report is Certain to Upset the IOC*, WALL ST. J. (Jan. 20, 1999), <http://www.wsj.com/articles/SB916784416903326000>.

57. See Richard Sandomir, *Olympics; I.O.C. Push for Reform Seeks Rules on Bribery*, N.Y. TIMES (Oct. 1, 1999), <http://www.nytimes.com/1999/10/01/sports/olympics-ioc-push-for-reform-seeks-rules-on-bribery.html>; Int'l Olympic Comm., *Report by the IOC 2000 Comm'n to the 110th IOC Session 1* (Dec. 1999), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/IOC-2000-Reform-Follow-up/EN-110th-IOC-Session-Report-by-the-IOC-2000-Commission-December-1999.pdf>.

58. See Int'l Olympic Comm., *supra* note 57, at 3–5.

59. See *id.* at 26.

60. Int'l Olympic Comm., *Host City Contract 2024 – Principles*, 15.2 (Sept. 2015) https://stillmed.olympic.org/Documents/Host_city_elections/Host_City_Contract_Principles.pdf.

In 1999, the IOC amended the Olympic Charter to create the Ethics Commission, which is responsible for conducting investigations into breaches of ethics and recommending disciplinary measures or sanctions to the Executive Board.⁶¹ The Ethics Commission is responsible for publishing and updating the IOC Code of Ethics, which binds the IOC members, NOCs, IFs, and OCOGs to “act with the highest degree of integrity” and with “impartiality, objectivity, independence and professionalism.”⁶² According to the Code of Ethics, “Olympic parties,” including IOC members, must not, directly or indirectly, “solicit, accept or offer any form of remuneration or commission, nor any concealed benefit or service of any nature, connected with the Olympic Games.”⁶³ The only exception is that members may take “tokens of consideration or friendship of nominal value, in accordance with prevailing local customs.”⁶⁴

The IOC has continued to modify and supplement its compliance program over the years. In 2013, the IOC adopted the Universal Principles of Good Governance, emphasizing transparency, particularly with regard to the IOC’s finances.⁶⁵ Notably, the IOC must now maintain an internal controls system to establish “control of the financial processes and operations” within the organization, including a “compliance system, document retention system and information security system.”⁶⁶ Moreover, in 2014, the IOC adopted the Olympic Agenda 2020, which suggested forty recommendations meant to, among other things, strengthen the IOC commitment to good governance, transparency and ethics.⁶⁷ Pursuant to those

61. See Int’l Olympic Comm., *Ethics Comm’n* (last visited Jan. 22, 2017), <https://www.olympic.org/ethics-commission>; Int’l Olympic Comm., *Olympic Charter*, Rule 22 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

62. See Int’l Olympic Comm., *Code of Ethics* 11, 14 (2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Code-of-Ethics/2016/Book-Code-of-Ethics-2016.pdf#_ga=1.47959138.415998738.1485096175.

63. *Id.* at 14.

64. *Id.*

65. See Int’l Olympic Comm., *Good Governance*, <https://www.olympic.org/good-governance> (last visited Jan. 22, 2017).

66. Int’l Olympic Comm., *supra* note 62, at 69.

67. See Int’l Olympic Comm., *Olympic Agenda 2020: 20+20 Recommendations* (2014), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Olympic-Agenda-2020/Olympic-Agenda-2020-20-20-Recommendations.pdf#_ga=1.48429027.415998738.1485096175; see also Int’l Olympic Comm., *IOC Annual Report: Credibility, Sustainability and Youth* (2015), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/IOC->

recommendations, the IOC publishes an annual report of its financial statements and has its financial statements audited in accordance with the International Financial Reporting Standards.⁶⁸

Implementation of the Olympic Agenda 2020 began in earnest in 2015. At that time, the IOC bolstered the independence of the Ethics Commission by having its members elected by the Session (rather than appointed by the Executive Board), revised existing ethics policies, launched an integrity and compliance hotline, and created the Ethics and Compliance Office to conduct independent investigations of suspected wrongdoing and provide education, information, and confidential advice to Olympic personnel regarding the ethical principles and rules.⁶⁹ Notably, the IOC revised conflict of interest rules to require IOC members with a potential conflict of interest—including the interests of a parent, spouse, relation or dependent—from “accepting any form of benefit whatsoever” and directing the IOC member to consult with the Chief Ethics and Compliance Officer.⁷⁰

Finally, the IOC implemented a number of changes in the process by which candidate cities submit bids to host the Olympic Games.⁷¹ Most important, the IOC President now selects an Evaluation Commission to evaluate bids from candidate cities and to conduct site visits.⁷² The Evaluation Commission Working Group then publishes an open report to the Executive Board summarizing the contents of the bids and making transparent recommendations based on a pre-approved matrix.⁷³ IOC members who are not on the Evaluation Commission are prohibited from visiting candidate cities, and the candidate cities are prohibited from hosting sporting events at which large numbers of IOC members would participate.⁷⁴

During the bidding process, the IOC prohibits an IOC member

Annual-Report/IOC-Annual%20Report-2015.pdf#_ga=1.82040787.415998738.1485096175.

68. See Int’l Olympic Comm. *Olympic Agenda 2020: 20+20 Recommendations*, at 21 (2014).

69. See Int’l Olympic Comm., *Ethics Commission* (Jan. 22, 2017), <https://www.olympic.org/ethics-commission>.

70. See Int’l Olympic Comm., *supra* note 62, at 30, 31 (2016).

71. INT’L OLYMPIC COMM., *Olympic Agenda 2020*, *supra* note 68 at 3, 9–11.

72. See Int’l Olympic Comm., *Evaluation Commission* (Jan. 22, 2017), <https://www.olympic.org/evaluation-commission>.

73. See Int’l Olympic Comm., *Games of the XXXII Olympiad 2020 Working Group Report*, (Apr. 5, 2012), https://stillmed.olympic.org/Documents/Host_city_elections/Final-report-2020-Working-Group-English.pdf.

74. Int’l Olympic Comm., *supra* note 62, at 35, 40.

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from receiving any gift, of any value, from a candidate city.⁷⁵ Candidate cities are allowed to promote their bids to IOC members, but only during international events or competitions or through written documentation.⁷⁶ Moreover, promotion cannot be undertaken by third parties.⁷⁷ Further, the IOC requires that the candidate city and associated NOC declare and register all consultants, individuals or companies that are participating in or supporting the city's candidacy to the IOC.⁷⁸

Most recently, the IOC entered into a contract with Los Angeles and the U.S. NOC related to the 2028 Summer Olympics that contains, for the first time, a provision prohibiting fraud or corruption on the part of the host city, NOC, or Organizing Committee with respect to their activities organizing the Olympic games, including “by establishing and maintaining effective reporting and compliance.”⁷⁹

The IOC has undoubtedly made many positive changes to its anti-corruption program in the last fifteen-years in response to the corruption risks it has confronted. To examine the effectiveness of these changes – and any gaps that remain in the IOC's policies and procedures – it is useful to step back and consider internationally accepted best practices for anti-corruption compliance programs. We can then assess the IOC's program through the prism of those best practices.

III. ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAM

There are a number of international standards available setting forth best practices for corporate anti-bribery and corruption programs, including guidance published by the OECD and

75. *Id.* at 41.

76. *Id.* at 40.

77. *Id.* at 38.

78. *Id.* at 36.

79. INT'L OLYMPIC COMM., *Host City Contract Principles: Games of the XXXIV Olympiad – Candidature Process 2028*, (July 2017), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Host-City-Elections/XXXIV-Olympiad-2028/Host-City-Contract-2028-Principles.pdf#_ga=2.166505593.696523938.1501602803-1756006933.1453748726; Andy Spalding, *The Olympic Anti-Corruption Era Begins*, THE FCPA BLOG (Aug. 1, 2017), http://www.fcpcbog.com/blog/2017/8/1/andy-spalding-the-olympic-anti-corruption-era-begins.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+fcpcbog%2FsLbh+%28The+FCPA+Blog%29.

International Standards Organizations.⁸⁰ Further, the United States and United Kingdom have both offered guidance regarding the best practices for an anti-bribery and corruption compliance program.⁸¹

International authorities have tended to converge on the basic elements of an effective compliance program, such as the one that the IOC would be advised to continue to build as a result of its past experiences with corruption in the bidding process. The following are some of the hallmarks of an effective anti-corruption compliance program, focusing on those elements that would be most relevant to the IOC, and using U.S. enforcement authorities as a guidepost.

A. *Commitment from Senior Management*

Compliance begins with senior leaders setting a proper tone and creating a “compliance culture.”⁸² In assessing the effectiveness of a compliance program, U.S. enforcement authorities evaluate the extent to which senior management has “clearly articulated company standards, communicated them in unambiguous terms, adhered to them scrupulously, and disseminated them throughout the organization.”⁸³ Commitment from senior management is necessary to transform a strong paper compliance program into an effective tool to fight corruption. Strong commitment from senior management encourages middle management to reinforce the message, expanding

80. See generally Good Practice Guidance on Internal Controls, Ethics, and Compliance, Organisation for Economic Co-operation and Development (Feb. 18, 2010), <http://www.oecd.org/daf/anti-bribery/44884389.pdf>; ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use, Int’l Organization for Standardization (2016), <https://www.iso.org/obp/ui/#iso:std:iso:37001:ed-1:v1:en>.

81. See generally DEP’T OF JUST. & SEC. & EXCH. COMM., A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT (2012) [hereinafter FCPA Resource Guide]; U.S. SENT’G COMM., FEDERAL SENTENCING GUIDELINES MANUAL (2012); see also MINISTRY OF JUST., THE BRIBERY ACT 2010 (2011).

82. FCPA Resource Guide, *supra* note 81, at 57; see also MINISTRY OF JUST., THE BRIBERY ACT 2010: Guidance § 2.1 (2010) (calling for “top-level management” to “foster a culture” in which “bribery is never acceptable”); THE WORLD BANK, SUMMARY OF WORLD BANK GROUP INTEGRITY COMPLIANCE GUIDELINES § 2.1 (2010); ISO 37001:2016 ANTI-BRIBERY MANAGEMENT SYSTEMS — REQUIREMENTS WITH GUIDANCE FOR USE § A.3.1, INT’L ORGANIZATION FOR STANDARDIZATION (2016); DEPT. OF JUST., THE FRAUD SECTION’S FOREIGN CORRUPT PRACTICES ACT ENFORCEMENT PLAN AND GUIDANCE 7 (2016) (stating a company must have “established culture of compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated”).

83. FCPA Resource Guide, *supra* note 81, at 57; see also ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.1.2(d)–(e), (h)–(k), Int’l Organization for Standardization (2016); Ministry of Justice, The Bribery Act 2010: Guidance § 2.2 (2010).

the reach and influence of compliance programs and staff.⁸⁴ Alternatively, weak leadership (including explicit or implicit messages to engage in or overlook misconduct to achieve sales or business objectives) undermines the effectiveness of compliance programs and may subject a company to criminal liability.⁸⁵

B. Code of Conduct

A code of conduct is viewed as a foundational element of an effective compliance program.⁸⁶ Effective codes are clear, concise, and accessible to all employees of the company and any third parties that do business on the company's behalf.⁸⁷ U.S. enforcement authorities emphasize that the code of conduct should be available in the local languages of any employees working in foreign countries, and an organization should periodically reviews its code of conduct to ensure that it is current and effective.⁸⁸

U.S. enforcement authorities also evaluate whether a company has policies and procedures that outline compliance responsibilities in the company; establish appropriate internal controls, auditing practices, and documentation policies; and set forth disciplinary procedures in the event of a violation.⁸⁹ Specific policies and procedures should be tailored to take into account a company's business model, the size of the business, and risks associated with the business.⁹⁰ To be effective, the policies and procedures must be

84. FCPA Resource Guide, *supra* note 81, at 57.

85. See U.S. Sentencing Guidelines Manual § 8B2.1(b)(2)(A) (setting forth the "minim[um] require[ments]" for governing authorities and high-level personnel in "promoti[ng] an organizational culture that encourages ethical conduct and a culture of compliance with law"); Dept. of Justice, *Principles of Federal Prosecution of Business Organizations*, U.S. Attorney's Manual §9-28.800 (2015).

86. FCPA Resource Guide, *supra* note 81, at 57; see also ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 4.3, Int'l Organization for Standardization (2016).

87. See FCPA Resource Guide, *supra* note 81, at 57; see also Ministry of Justice, *The Bribery Act 2010: Guidance, Principle 1 and § 1.1* (2010); Ministry of Justice, *The Bribery Act 2010: Guidance § 2.2* (2010); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 2, Organisation for Economic Co-operation and Development (Feb.18, 2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.2, 8.5, Int'l Organization for Standardization (2016).

88. FCPA Resource Guide, *supra* note 81, at 57–58; ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.2, 7.4, Int'l Organization for Standardization (2016).

89. FCPA Resource Guide, *supra* note 81, at 58; see also Ministry of Justice, *The Bribery Act 2010: Guidance §§ 1.6, 1.7* (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.2, 7.2.2.1, 7.5, 8.3, 8.4, A.11, A.12, Int'l Organization for Standardization (2016).

90. FCPA Resource Guide, *supra* note 81, at 58; see also Ministry of Justice, *The*

developed based on an “in-depth understanding of the company’s business model, including its products and services, third-party agents, customers, government interactions, and industry and geographic risks.”⁹¹

C. *Oversight, Autonomy and Resources of Compliance Program*

It is important for those charged with leading the compliance effort to have the necessary autonomy and resources to carry out their duties. Enforcement authorities often evaluate whether a company has assigned responsibility for the oversight and implementation of the program to one or more specific senior executives within an organization⁹² and whether those individuals have appropriate authority within the organization, adequate autonomy from management, and sufficient staffing and resources to ensure that the compliance program is implemented.⁹³ Adequate autonomy usually requires that the compliance officer be given direct access to a company’s governing authority, such as the board or audit committee.⁹⁴

The sufficiency of compliance resources is often measured based on the size, structure, and risk profile of a company (including, among other things, its complexity, industry, and geographical reach).⁹⁵ Enforcement authorities may evaluate other control functions, such as Legal, Finance, and Audit, against these

Bribery Act 2010: Guidance §§ 1.3, 1.7 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 4.3, Int’l Organization for Standardization (2016).

91. FCPA Resource Guide, *supra* note 81, at 58.

92. See FCPA Resource Guide, *supra* note 81, at 58; ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 5.3.2, Int’l Organization for Standardization (2016); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 4, Organisation for Economic Co-operation and Development (Feb.18, 2010); The World Bank, *Summary of World Bank Group Integrity Compliance Guidelines* § 2.3 (2010).

93. See FCPA Resource Guide, *supra* note 81, at 58 (citing U.S. Sentencing Guidelines § 8B2.1(2)(B)-(C) (2011)).

94. See *id.*; ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.3.2, A.6.2, A.6.3, Int’l Organization for Standardization (2016); Dept. of Justice, *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* 7 (2016).

95. See FCPA Resource Guide, *supra* note 81, at 58.; Ministry of Justice, The Bribery Act 2010: Guidance § 3.3 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.1.1(c)–(d), 7.1, A.6.1, A.7, Int’l Organization for Standardization (2016); Dept. of Justice, *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* 7 (2016).

requirements as well.⁹⁶ Further, enforcement authorities recognize that the compliance reporting structure may appropriately vary depending on the size and complexity of the organization.⁹⁷ For instance, in larger organizations, it may be necessary to delegate day-to-day operational responsibilities for the compliance program to other individuals.

Often, companies found to have engaged in corruption create new or enhanced compliance resources to prevent future misconduct. For example, in 2008, Siemens entered into a plea agreement with the U.S. Department of Justice related to serious violations of the Foreign Corrupt Practices Act (“FCPA”) spanning its global operations.⁹⁸ In accepting a plea, the U.S. government noted Siemens’ “extraordinary” reorganization and remediation efforts that “set a high standard for multi-national companies to follow.”⁹⁹ Among other measures, Siemens consolidated its compliance organization under a new position, the Chief Compliance Officer, who reported directly to the CEO and General Counsel, a structure that has since become increasingly common.¹⁰⁰ Siemens also required that every member of its 450-person audit staff reapply for their positions to ensure that auditing personnel were competent.¹⁰¹

D. Risk Assessments

Risk assessments are essential to an effective compliance program: the design of internal controls in a company must take into account the operational realities and risks of a company’s business. When evaluating a compliance program, enforcement authorities consider whether and to what degree a company analyzes and addresses its particular risks.¹⁰² Companies are expected to increase

96. See Dept. of Justice, *Evaluation of Corporate Compliance Programs* 2–3 (2017); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 8.10(c)–(d), 9.2.4, Int’l Organization for Standardization (2016).

97. See FCPA Resource Guide, *supra* note 81, at 58.

98. See Dep’t. Sentencing Memorandum at 3–10, *United States v. Siemens Aktiengesellschaft* (D.C. Cir. Dec. 12, 2008) (No. 08-cr-00367).

99. See *id.* at 14, 24.

100. *Id.* at 22.

101. See Dep’t. Sentencing Memorandum at 22, *United States v. Siemens Aktiengesellschaft* (D.D.C. Dec. 12, 2008) (No. 08-cr-367).

102. See FCPA Resource Guide, *supra* note 81, at 40, 58; Dept. of Justice, *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* 7 (2016); Dept. of Justice, *Evaluation of Corporate Compliance Programs* 4–5 (2017); Ministry of Justice, *The Bribery Act 2010: Guidance* §§ 3.1, 3.5 (2010); The World Bank, *Summary of World Bank Group Integrity Compliance Guidelines* § 3 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 4.5, A.4, Int’l

their compliance procedures and resources—including in areas such as due diligence or internal audits—as appropriate to meet the types and level of risks they face.¹⁰³

It is important to tailor a compliance program. One-size-fits-all compliance programs are not effective and, often, limited compliance resources are wasted on low-risk markets and transactions, while insufficient resources are dedicated to higher-risk areas. The U.S. Department of Justice and the Securities and Exchange Commission give “meaningful credit” to risk-based programs that fail to prevent an infraction in a low-risk area because resources were directed to higher-risk transactions.¹⁰⁴ Alternatively, companies are more culpable where a violation occurs because a company failed to “perform a level of due diligence commensurate with the size and risk of the transaction.”¹⁰⁵

E. Training and Continuing Advice

Effective compliance programs must be communicated throughout an organization, including risk-based periodic training and certification for all directors, officers, “relevant” employees, and, when appropriate, agents and business partners.¹⁰⁶ Trainings should cover compliance policies and procedures, instruction on applicable law, practical advice, and case studies.¹⁰⁷ The content also should be tailored for the intended audience, and U.S. enforcement authorities suggest providing training in local languages and adjusting the training content to address the different risks that personnel are likely to encounter.¹⁰⁸ Depending on their size, companies should also

Organization for Standardization (2016).

103. FCPA Resource Guide, *supra* note 81, at 59; Ministry of Justice, The Bribery Act 2010: Guidance § 4.5 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 8.2, Int’l Organization for Standardization (2016).

104. *See* FCPA Resource Guide, *supra* note 81, at 59.

105. *Id.*

106. *See* FCPA Resource Guide, *supra* note 81, at 59; Dept. of Justice, *Evaluation of Corporate Compliance Programs* 4–5 (2017) (asking, among other things, whether “there has been clear guidance and/or training for the key gatekeepers . . . in control processes relevant to the potential misconduct”); Ministry of Justice, The Bribery Act 2010: Guidance §§ 1.7, 5.1, 5.6–5.8 (2010); Good Practice Guidance on Internal Controls, Ethics, and Compliance §§ 8, 11(i), Organisation for Economic Co-operation and Development (Feb. 18, 2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 7.3, Int’l Organization for Standardization (2016).

107. *See* FCPA Resource Guide, *supra* note 81, at 59; Ministry of Justice, The Bribery Act 2010: Guidance § 5.5 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 7.3, 8.9, Int’l Organization for Standardization (2016).

108. FCPA Resource Guide, *supra* note 81, at 59; Dept. of Justice, *Evaluation of*

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implement “appropriate measures” to provide guidance and advice on complying with the company’s compliance program, including when such advice is urgent.¹⁰⁹

F. Incentives and Disciplinary Measures

Enforcement authorities underline the importance of enforcing compliance requirements in an organization and incentivizing compliant behavior, specifically, whether a company has appropriate and clear disciplinary policies that apply equally to all employees; whether the procedures are applied fairly, consistently, and promptly, including against managers who supervise employees who violate company policy; and whether the punishments are commensurate with the violation.¹¹⁰

Compliance programs also should create positive incentives for ethical behavior, while taking care to ensure that rewards do not create unintended negative consequences.¹¹¹ U.S. enforcement authorities encourage companies to highlight compliance within their organizations and to consider ethics and compliance in promotion, compensation, and evaluation decisions.¹¹²

G. Third-Party Due Diligence and Payments

Agents, consultants, distributors, and other third parties are commonly used as conduits for improper payments. Under the FCPA, for example, knowledge includes more than actual knowledge of wrongdoing: a person has knowledge if he or she consciously avoids actual knowledge.¹¹³ U.S. enforcement authorities believe that knowledge includes willful blindness to any “‘signaling device’ that should reasonably alert [a company] of the ‘high probability’ of an

Corporate Compliance Programs 5 (2017).

109. See FCPA Resource Guide, *supra* note 81, at 59; ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 8.9, A.2.2.3, Int’l Organization for Standardization (2016) (providing potential guidance when personnel face improper requests).

110. See FCPA Resource Guide, *supra* note 81, at 59; Dept. of Justice, *Evaluation of Corporate Compliance Programs* 6 (2017); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 10, Organisation for Economic Co-operation and Development (Feb.18, 2010).

111. See FCPA Resource Guide, *supra* note 81, at 59–60; Dept. of Justice, *Evaluation of Corporate Compliance Programs* 6 (2017); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 9, Organisation for Economic Co-operation and Development (Feb.18, 2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 7.2.2.2, A.8.2, Int’l Organization for Standardization (2016).

112. FCPA Resource Guide, *supra* note 81, at 59-60.

113. See *United States v. Kozeny*, 667 F.3d 122, 132 (2d Cir. 2011).

FCPA violation.”¹¹⁴ As a result of this heightened “knowledge” standard under the FCPA, risk-based third-party due diligence is considered an essential hallmark of an effective anti-corruption compliance program, and companies are expected to respond to any red flags that arise, whether as part of pre-engagement due diligence or throughout the relationship.¹¹⁵

While U.S. enforcement authorities recognize that due diligence should take into account the industry, country, length of relationship with the third party, and the size and nature of the transaction, they also define three general avenues of inquiry that “always apply.”¹¹⁶ First, companies must understand the qualifications and associations of the third party, including its business reputation and relationships.¹¹⁷ The degree of scrutiny should increase if a company becomes aware of red flags.¹¹⁸

Second, companies must understand the business rationale for incorporating third parties into a transaction.¹¹⁹ Companies should compare the payment terms for the third party to typical terms in the industry and country, check the timing and source of the third party’s introduction to the transaction, and confirm and document that the third party is actually performing work and that the pay is commensurate with the work.¹²⁰

114. FCPA Resource Guide, *supra* note 81, at 22 (quoting H.R. Rep. No. 100-576, at 922).

115. *See id.* at 23; Dept. of Justice, *Evaluation of Corporate Compliance Programs 7* (2017); Ministry of Justice, *The Bribery Act 2010: Guidance §§ 4.3–4.5* (2010); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 8.2, A.10*, Int’l Organization for Standardization (2016); The World Bank, *Summary of World Bank Group Integrity Compliance Guidelines § 5.1* (2010); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 6(i), Organisation for Economic Co-operation and Development (Feb.18, 2010). The SEC and DOJ provide a non-exhaustive list of examples of common “red flags” in third-party transactions: (1) excessive commissions to agents or consultants; (2) unreasonably large discounts to distributors; (3) “consulting agreements” with vaguely defined services; (4) third parties unqualified for the work in which they have been engaged; (5) third parties with close relationships to foreign officials; (6) third-parties that enter the transaction at the request of a foreign official; (7) shell companies operating as third-parties; and (8) third-party requests to use offshore bank accounts. FCPA Resource Guide, *supra* note 81, at 22–23.

116. FCPA Resource Guide, *supra* note 81, at 60.

117. *Id.*; *see also* Ministry of Justice, *The Bribery Act 2010: Guidance § 4.5* (2010); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use §§ A.10.3(a)(2), A.12(a)*, Int’l Organization for Standardization (2016).

118. FCPA Resource Guide, *supra* note 81, at 60.

119. *Id.*; *see also* ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use §§ A.10.3(a), A.12(b)*, Int’l Organization for Standardization (2016).

120. FCPA Resource Guide, *supra* note 81, at 60; Dept. of Justice, *Evaluation of*

Third, companies should conduct ongoing monitoring of third parties.¹²¹ Depending on the level of risk, companies should update due diligence periodically, exercise audit rights, and provide periodic training to third parties.¹²² Third parties should be made aware of the company's anti-corruption policies, and may submit annual compliance certifications assuring the company of a reciprocal commitment to ethical and lawful business practices.¹²³

H. Confidential Reporting and Internal Investigations

An effective compliance program provides a secure, confidential and accessible means for employees to report suspected or actual violations of the company's policies, provide suggestions for improvement of a company's anti-corruption procedures, and request advice.¹²⁴ The compliance function should have complete access to all reporting and investigative information,¹²⁵ and, in all cases, employees should be able to use the systems without fear of retaliation.¹²⁶

Companies must also create an efficient, reliable and properly funded process to undertake reasonably scoped investigations of

Corporate Compliance Programs 7 (2017) (asking about the "business rationale for the use of the third parties" and how the company ensured "that the payment terms are appropriate, that the described contractual work is performed, and that compensation is commensurate with the services rendered").

121. FCPA Resource Guide, *supra* note 81, at 60; *see also* ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 8.2, Int'l Organization for Standardization (2016).

122. FCPA Resource Guide, *supra* note 81, at 60.

123. *Id.* at 60–61; *see also* Ministry of Justice, The Bribery Act 2010: Guidance § 5.7 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 7.3, A.10(e), Int'l Organization for Standardization (2016).

124. FCPA Resource Guide, *supra* note 81, at 61; Ministry of Justice, The Bribery Act 2010: Guidance § 5.3 (2010); Good Practice Guidance on Internal Controls, Ethics, and Compliance § 11.1(ii), Organisation for Economic Co-operation and Development (Feb.18, 2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § 8.9(a)–(c), Int'l Organization for Standardization (2016).

125. *See* Dept. of Justice, *Evaluation of Corporate Compliance Programs 5* (2017); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use § A.18.2, Int'l Organization for Standardization (2016).

126. *See* FCPA Resource Guide, *supra* note 81, at 61; Ministry of Justice, The Bribery Act 2010: Guidance §§ 2.3, 5.3 (2010); ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.2.1(1), 7.2.2.1(d), 8.9(d), Int'l Organization for Standardization (2016). The International Standards Organization suggests that anti-retaliation provisions be extended to cover an employee's refusal, in good faith or on a reasonable basis, to engage in an activity where there is more than a low risk of bribery that has not been adequately mitigated by the company, even if the refusal results in a loss of business. *See* ISO 37001:2016 Anti-Bribery Management Systems — Requirements with Guidance for Use §§ 5.2.1(1), 7.2.2.1(d), Int'l Organization for Standardization (2016).

allegations of misconduct and documenting the response, including disciplinary or remedial measures.¹²⁷ Enforcement authorities emphasize that companies should use internal investigations as an opportunity to learn from experience and update the company's compliance program as appropriate.¹²⁸

I. Continuous Improvement and Periodic Testing and Review

Enforcement authorities emphasize the importance of continuously reviewing and improving a compliance program to address weaknesses or risks exposed through periodic risk assessments, testing, audits, investigations, and changes in a company's area of operation, the nature of the customers, applicable laws, and industry standards.¹²⁹

Companies committed to improvement make "thoughtful efforts to create a sustainable compliance program if a problem is later discovered," and address risk areas before they become violations.¹³⁰ Companies can use employee surveys, risk assessments, control testing, and internal audits to identify new risks or weaknesses in internal controls, although the nature and frequency of evaluations can appropriately vary depending on the size, complexity and risk

127. See FCPA Resource Guide, *supra* note 81, at 61; Dept. of Justice, *Evaluation of Corporate Compliance Programs 5* (2017); Ministry of Justice, *The Bribery Act 2010: Guidance § 6.2* (2010); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use §§ A.18.1, A.18.3*, Int'l Organization for Standardization (2016). The International Standards Organization recommends that companies focus during investigations on, among other things, applicable local law, the risk of defamation, the protection of individuals making reports, potential criminal and civil liability, and any legal obligations or benefits related to reporting investigations to authorities. See ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use § A.18.6*, Int'l Organization for Standardization (2016).

128. See FCPA Resource Guide, *supra* note 81, at 61; Good Practice Guidance on Internal Controls, Ethics, and Compliance § 11(iii), Organisation for Economic Co-operation and Development (Feb.18, 2010); Dept. of Justice, *Evaluation of Corporate Compliance Programs 5* (2017) (suggesting that companies are expected to undertake a root cause analysis for substantiated instances of misconduct); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use § A.18.8*, Int'l Organization for Standardization (2016) (recommending that companies implement follow-up procedures for anti-bribery investigations, including appropriate disciplinary action; repaying or reclaiming any improper benefit obtained as a result of misconduct; terminating, withdrawing from or modifying the organization's involvement in a project, transaction or contract; reporting a matter to the authorities; or, if bribery has occurred, taking action to avoid or deal with possible consequent legal offenses).

129. See FCPA Resource Guide, *supra* note 81, at 58–62; Ministry of Justice, *The Bribery Act 2010: Guidance §§ 6.1–6.4* (2010); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use § 10.1*, Int'l Organization for Standardization (2016).

130. FCPA Resource Guide *supra* note 81, at 62.

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profile of the organization.¹³¹

IV. GAPS AND CONTINUED AREAS FOR IMPROVEMENT IN THE IOC'S PROGRAM

Despite the improvements to its compliance program, the IOC is still quite vulnerable to the risks of corruption. Indeed, recent allegations of corruption in the IOC have once again called into question the organization's commitment to ethics and integrity.¹³² For example, French authorities announced an investigation of the awards for the 2016 and 2020 Summer Olympic Games due to allegations that the Japanese Olympic Committee used a consultant to provide up to two million dollars to Lamine Diack, the former President of the International Association of Athletics Federation, in exchange for votes.¹³³

Reviewing the IOC's compliance program in light of international best practices, there are still gaps in the IOC's policies that may provide opportunities for misconduct. This Article now examines the gaps in the IOC's program and the areas in which there is room for improvement.

A. *Membership Selection*

The IOC acts through its members – at the annual Session – and thus, the selection of members is significant to the operation of the organization. There are both substantive and procedural issues that can be improved with respect to member selection – with the goals of improving quality and increasing transparency.

131. See *id.*; Dept. of Justice, *Evaluation of Corporate Compliance Programs* 6 (2017); Ministry of Justice, *The Bribery Act 2010: Guidance* § 6.2 (2010); ISO 37001:2016 *Anti-Bribery Management Systems — Requirements with Guidance for Use* § 9.3.1, Int'l Organization for Standardization (2016) (setting forth areas for top management to examine to evaluate the effectiveness of a company's compliance program).

132. See, e.g., Sean Ingle, *Tokyo Olympic Games corruption claims bring scandal back to the IOC*, THE GUARDIAN (May 11, 2016, 10:58 AM), <https://www.theguardian.com/sport/2016/may/11/tokyo-olympic-games-2020-ioc-international-olympic-committee-corruption-bid-scandal>.

133. See Gerard Bon, *France Extends Corruption Probe to Olympic Bids Process*, REUTERS (Mar. 1, 2016, 5:22 PM), <http://www.reuters.com/article/us-athletics-corruption-olympics-idUSKCN0W356P>; Justin McCurry & Owen Gibson, *Tokyo Olympics: Japan to "Fully Cooperate" with Suspicious Payments Inquiry*, THE GUARDIAN (May 16, 2016, 7:48 AM), <https://www.theguardian.com/world/2016/may/16/tokyo-olympics-japan-vows-to-fully-cooperate-with-suspicious-payments-inquiry>.

At the moment, there are no term limits for IOC members.¹³⁴ And although IOC members cannot serve past age seventy, the age restriction can be waived by the Session upon the recommendation of the Executive Board.¹³⁵ The Olympic Agenda 2020 noted the wide latitude granted the Session to waive the age limit and recommended that the exception be applied in a maximum of five cases at a given time.¹³⁶ The IOC already adopted the recommendation regarding waiver of the age limit,¹³⁷ which is a step in the right direction. The IOC should also implement term limits for its members. Corporate governance best practices include term limits for board members to avoid apathy, to facilitate the removal of non-performing or poor performing members, and to bring in fresh talent and ideas to a board.

The Olympic Agenda 2020 also recommended that the then-Nominations Commission take a more active role in identifying candidates to ensure that the Session contains an adequate balance in terms of skill, knowledge and geography.¹³⁸ The Member Evaluation Commission was charged with proposing a new targeted recruitment process for IOC members.¹³⁹ Currently, the members are essentially self-selected by the IOC Elections Commission; candidates submit a CV, a “motivation letter,” and must be sponsored by three IOC members.¹⁴⁰ It is not a particularly transparent or representative process. The IOC should consider greater transparency in the nominations as well in the qualifications sought for its members.

B. Additional Due Diligence and Vetting

In addition to membership selection requirements, the IOC

134. See Int’l Olympic Comm., *IOC Members Election Commission*, <https://www.olympic.org/ioc-members-election-commission> (last visited Jan. 22, 2017).

135. Int’l Olympic Comm., *Olympic Charter* Rule 16.1, 16.3 at 37 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

136. Int’l Olympic Comm., *Olympic Agenda 2020: 20+20 Recommendations* (2014), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Olympic-Agenda-2020/Olympic-Agenda-2020-20-20-Recommendations.pdf#_ga=1.48429027.415998738.1485096175.

137. Int’l Olympic Comm., *Olympic Charter* Rule 16.1 at 37 (effective Aug. 2, 2016), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf#_ga=1.48953187.415998738.1485096175.

138. Int’l Olympic Comm., *Olympic Agenda 2020: 20+20 Recommendations* (2014), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Olympic-Agenda-2020/Olympic-Agenda-2020-20-20-Recommendations.pdf#_ga=1.48429027.415998738.1485096175.

139. Int’l Olympic Comm., *IOC Members Election Commission*, <https://www.olympic.org/ioc-members-election-commission> (last visited Jan. 22, 2017).

140. *Id.*

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should consider additional requirements and due diligence surrounding the character and fitness of IOC members. For example, the IOC can use the Ethics Commission to conduct additional due diligence and vetting. As officials in a position of public trust, IOC members should not be subject to convictions or findings suggesting failures in their ethics and integrity. Further, the IOC should consider temporary suspensions for members subject to investigations calling a member's character or fitness into question; allowing those members to cast votes for the selection of the host city can cast doubt on the propriety of the process, especially if the investigations eventually lead to sanctions. For instance, the list of current, former, and honorary IOC members still includes individuals involved in the FIFA scandal, prompting many to suggest that the French investigation into the selection of the 2016 and 2020 Olympic Games may be well-founded.¹⁴¹

C. *Internal Controls*

The IOC should consider additional policies and procedures to increase transparency and tighten internal controls. For example, the IOC should set limits on expenditures and travel, and designate individuals who are required to approve such expenses depending on various thresholds. In addition, the IOC should take a close look at potential conflicts of interest which are likely to arise in the context of selecting host cities. The IOC should consider requiring disclosure of potential conflicts to the Ethics Commission and certifications of assets and income updated annually or as needed.

D. *Training*

Another area for increased investment may be additional training for IOC members. Although the Ethics and Compliance Office has educational duties, little information exists on formal training requirements for IOC members regarding their ethical and professional responsibilities.¹⁴² At a minimum, IOC members should

141. See Sean Ingle, *Tokyo Olympic Games Corruption Claims Bring Scandal Back to IOC*, THE GUARDIAN (May 11, 2016, 10:58 AM), <https://www.theguardian.com/sport/2016/may/11/tokyo-olympic-games-2020-ioc-international-olympic-committee-corruption-bid-scandal> (citing Lamine Diack, mentioned above as the potential recipient of two million dollars from the Japanese NOC in exchange for votes; Sepp Blatter, the former, disgraced president of FIFA; Issa Hayatou, accused of taking \$1.5 million to support Qatar's bid for the World Cup; and Sheikh Ahmad al-Fahad al-Sabah, accused of using the Olympic Council of Asia to buy votes).

142. Int'l Olympic Comm., *Ethics Commission: Decisions*, <https://www.olympic.org/ethics-commission> (last visited Jan. 22, 2017).

annually certify that they have read the Code of Ethics. In addition, the IOC should consider implementing a periodic training program regarding ethics that includes specific situations that IOC members may encounter. The training should be tailored to the situations that IOC members actually face when interacting with candidate cities, vendors, or sponsors.

E. Gifts

Since IOC members are permitted to receive “gifts of nominal value” when culturally appropriate,¹⁴³ the IOC should consider a policy requiring members to document such gifts because it would provide information regarding the cultures and geographies where gift giving is expected with respect to members’ IOC responsibilities. Similarly, IOC members should be required to disclose improper solicitations or offers of gifts to the Ethics and Compliance Office.

F. Enforcement and Initiation of Investigations

Even with new procedures, there has been a lack of robust enforcement at the IOC. In the last three years, there have been only two final decisions of the Ethics Commission: one reinstating a previously suspended member and another suspending a member for plagiarism.¹⁴⁴ There has been no enforcement for misconduct in any other areas during this period.¹⁴⁵ The last findings related to corruption were in 2011, in which the IOC issued a reprimand to Issa Hayatou—who remains a member—and a warning to Lamine Diack for accepting payments from a marketing partner of FIFA as President of the African Football Confederation.¹⁴⁶ Stricter discipline against those individuals may have protected the IOC from recent allegations. As noted above, Mr. Diack is the target of a French investigation of alleged payments made by the Japanese NOC in

143. Int’l Olympic Comm., *2022 Candidature Procedure and Questionnaire*, https://stillmed.olympic.org/Documents/Host_city_elections/FINAL_2022_Candidature_Procedure_and_Questionnaire-FINAL.pdf (last visited Jan. 22, 2017).

144. Int’l Olympic Comm., *Ethics Commission: Decisions*, *supra* note 130.

145. *Id.*

146. Int’l Olympic Comm., *Ethics Commission Decision with Recommendation N°D/02/2011* (Oct. 3, 2011), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Ethics/Decisions/EN-Decision-N-02-11-dated-03-10-2011.pdf#_ga=1.2175093.415998738.1485096175; Int’l Olympic Comm., *Ethics Commission Decision with Recommendation N°D/01/2011* (Oct. 3, 2011), https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Ethics/Decisions/EN-Decision-N-01-11-dated-03-10-2011.pdf#_ga=1.178698340.1118399489.1487368123.

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exchange for votes, and Mr. Hayatou is the subject of allegations related to the FIFA corruption scandal.¹⁴⁷

Enforcement authorities may view the failure to implement discipline consistently as a fatal deficiency in an otherwise effective compliance program. A lack of discipline can be perceived as the product of a weak commitment to ethical issues from senior leadership, structural problems with reporting within the organization, or the result of under-developed compliance investigation and audit resources.

In order to have more robust enforcement, the IOC should consider broadening the manner in which investigations may be initiated. Under the current system, only the IOC President or the Ethics Commission can initiate proceedings.¹⁴⁸ It is worth considering the creation of a separate audit or investigative office that is independent of both the Ethics Commission and the Ethics and Compliance Office and that can commence investigations on its own. This would also increase the IOC's internal investigations capacity to ensure that matters were handled by experienced investigators. Relatedly, the IOC's external audit is currently limited to finances;¹⁴⁹ it should consider an external audit for compliance controls.

Although the IOC has an ethics hotline, the pace of enforcement suggests that it has not been an effective tool for identifying potential misconduct.¹⁵⁰ This may be because the hotline may not have been adequately publicized or there may also be some concern in using it. The IOC should create a separate confidentiality and non-retaliation policy to encourage use of the ethics hotline and consultation with the Ethics and Compliance Office.

G. Risk Assessments

The Ethics and Compliance Office – or a separate audit or investigative office – should be equipped to conduct regular risk assessments to ensure that the compliance program is effective. This can be particularly significant and necessary when there are bids from

147. *Id.*

148. Int'l Olympic Comm., *IOC Members Election Commission*, <https://www.olympic.org/ioc-members-election-commission> (last visited Jan. 22, 2017).

149. Int'l Olympic Comm., *Audit Committee*, <https://www.olympic.org/audit-committee> (last visited Jan. 22, 2017).

150. *See* Int'l Olympic Comm., *Ethics Commission: Decisions*, <https://www.olympic.org/ethics-commission> (last visited Jan. 22, 2017).

countries that have a high perception of corruption.¹⁵¹ It is insufficient to develop a compliance program and allow it to become stale; it must be tested and verified to help the organization mitigate corruption risks.

H. Use of Independent Monitors

Another factor to consider is the use of independent monitors. While monitors have often been required by U.S. enforcement authorities as part of an agreement to settle corruption charges, some entities, and even governments, have used monitors in a proactive manner. For example, South Korea has implemented government monitoring to oversee spending related to the 2018 Olympic Games.¹⁵² The appointment of a credible and independent monitor to assist with specific issues or projects is an idea worth considering. While some may be deterred by the investment of resources at the front end, an effective monitor could not only assist in preventing corruption, but could be a helpful tool in reducing costs overall. Moreover, a monitor can be helpful in protecting against reputational risks.

CONCLUSION

The failure to award the Olympic Games to a viable host city is potentially an existential threat to the IOC. Such a result would run counter to the IOC's fundamental mission of protecting and promoting the Olympic Games, and it would impair revenues through an entire Olympiad. The IOC has made considerable progress updating its organization and installing a compliance program, and the organization should be commended for the actions taken in the wake of the Salt Lake City bribery scandal and, more recently, as a result of the Olympic Agenda 2020. Despite those gains, the IOC should stay vigilant for additional opportunities to close potential gaps and strengthen its ethics and compliance program. The IOC's resolve to stamp out corruption should be grounded in both its moral commitment to good governance and fair competition and the sheer economic importance of managing the Olympic Games responsibly and free of corruption. With some changes to its anti-corruption

151. See *Corruption Perceptions Index 2016*, TRANSPARENCY INTERNATIONAL, http://www.transparency.org/news/feature/corruption_perceptions_index_2016 (last visited Jan. 22, 2017).

152. See Laura Tulchin, *To Clean Up Big-Time Sports Events, Start With Monitors*, FCPA BLOG (Feb. 1, 2017, 9:18 AM), <http://www.fcablog.com/blog/2017/2/1/laura-tulchin-to-clean-up-big-time-sports-events-start-with.html#sthash.rMOH5pKQ.dpuf>.

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program, the IOC could more successfully accomplish that mission.