

worldsportslawreport

FEATURED ARTICLE
11/10



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FIFA's Code of Ethics: rules of conduct and sanctions

FIFA has recently found six officials guilty of breaching its Code of Ethics by accepting bribes during the bidding process for the 2018 and 2022 FIFA World Cup, but found no evidence of collusion between bidding nations. David Winnie, a Solicitor with Thomas Cooper, analyses rules of conduct under FIFA's Code of Ethics, potential sanctions available to FIFA for breaches of the Code and investigates routes for possible legal action by those accused.

Introduction

FIFA has been embroiled in a series of scandals recently, with alleged bribes to officials and collusion between member associations in relation to the 2018 and 2022 bidding process. FIFA's Code of Ethics (the 'Code') and the work of the Ethics Committee (the 'Committee') have now come under close scrutiny.

At the request of FIFA, the Committee has investigated alleged agreements between member associations and their bid committees in relation to the 2018 and 2022 bidding process - something which would also be a violation of the Bid Registration document and the Code.

The recent suspension by FIFA of six of the 24 members of its executive committee for periods of between one and four years for improper conduct in relation to the bidding process for the 2018 and 2022 FIFA World Cup has raised serious questions about FIFA itself.

This article will look at the Code and the Bid Registration in more detail and examine what sanctions are available to the Committee for Code breaches, as well as potential issues arising as a result of measures taken by FIFA.

Background

The FIFA Ethics Committee decided on 20 October 2010 to provisionally suspend, with immediate effect, two members of the FIFA Executive Committee - Amos Adamu and Reynald Temarii - from taking part in any football-related activity after examining their cases in relation to the bidding process for the 2018 and 2022 FIFA World Cups.

Journalists from *The Sunday Times* newspaper had exposed the officials secretly touting for payments to vote for rival nation bids to stage the tournament. Mr. Adamu and Mr. Temarii had allowed themselves to be lured into private talks by the journalists purporting to be lobbyists for a US consortium seeking to buy votes for the United States bid.

After hearing both executive committee members, the Committee considered that a provisional suspension was required while the investigation continued, taking into account the gravity of the matter and the possibility that a breach of the FIFA Statutes, the FIFA Code of Ethics and the FIFA Disciplinary Code may have been committed.

In addition, the Committee examined the cases of four officials - Slim Aloulou, Amadou Diakite, Ahongalu Fusimalohi and Ismael Bhamjee - also in relation to an alleged breach of the FIFA Statutes, the FIFA Code of Ethics and the FIFA Disciplinary Code linked to the bidding process for the 2018 and 2022 FIFA World Cups. The Committee also decided to suspend these four officials provisionally from taking part in any football-related activity.

The Committee also opened an investigation into alleged agreements between member associations and their Bid Committees in relation to the 2018 and 2022 FIFA World Cup bidding

process, something which would also be a violation of the Bid Registration document and the Code of Ethics.

On 18 November, it announced that it had suspended Temarii for one year, Adamu for three years, Aloulou for two years, Fusimalohi for three years, Diakite for three years and Bhamjee for four years. Temarii was fined CHF5,000 while all five others were fined CHF10,000. FIFA also stated that it had 'examined the information related to alleged agreements between member associations and their Bid Committees in relation to the 2018 and 2022 FIFA World Cup bidding process, but did not find enough evidence of a violation of the Bid Registration document and the Code of Ethics'.

FIFA's executive committee will decide the hosts of the 2018 and 2022 World Cups by secret ballot on December 2.

The FIFA Code of Ethics

Mr. Adamu and Mr. Temarii were found to have breached the Code (Art 11), which states, *inter alia*, that:

'Officials may not accept bribes...to incite breach of duty or dishonest conduct for the benefit of a third party..'

It is believed that the money offered to the two FIFA executive committee members was to fund their own projects - a football academy in New Zealand for one, and football pitches in Nigeria to the tune of \$800,000 (£500,000) for the other.

Both committee members were found guilty of taking bribes to influence their voting. Even if it could be argued that the money was a gift, the Code is quite explicit in that; 'accepting gifts of cash in any amount or form is prohibited' (Art 10).

Mr. Adamu had publicly stated that he was looking forward to the

investigation and also said that, “The [FIFA] ethics committee will investigate this and I am very happy about it because this will enable the whole world to know the truth of the matter. As far as I am concerned I am not guilty of what they are saying, but the ethics committee is a committee that is credible and FIFA is a credible organisation. I am sure that the whole truth will come out. I welcome it.”

If the two committee members had been able to convince the Committee that they were not guilty of taking bribes, their actions most certainly constitute behaviour unbecoming of FIFA officials. The Code states that officials:

‘shall respect the significance of their allegiance to FIFA...and represent them (FIFA) with respectability and with integrity’.

It also adds that officials ‘shall pledge to act in a dignified manner...with complete credibility and integrity’.

The Code is very clear on this issue. ‘Officials 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’ (Art 3).

Whether the two committee members were aware of the ‘sting’ operation by the journalists is irrelevant as, arguably, they should not have allowed themselves to be placed in that type of situation.

Bid Registration - Rules of Conduct

The Bid Registration document concerns the submission of bids for the right to host and stage the 2018 or 2022 FIFA World Cup and the rules of conduct pertaining to the bids. In particular, clause 11 deals with general ethical behaviour, statements concerning other member associations and unfair collaboration - all of which have come to the fore concerning

One of the issues is whether the Committee has the authority to expel a member of the FIFA Executive Committee

the 2018 and 2022 bids.

The Russians appeared to have used the suspension of the two committee members as an excuse to throw disparaging remarks at the English bid. Meanwhile, the Committee investigated separate allegations that Qatar’s 2022 bid has colluded with the Spain/Portugal 2018 to exchange votes. Both bids denied collusion - a sensible position, as FIFA dropped its investigation due to lack of evidence, as explained.

Against this backdrop, there are fears that the race to host the 2018 and 2022 World Cups could descend into a flurry of damaging litigation if it proceeds as planned. More than one bidding nation is believed to be considering the possibility of legal action against rivals if the result does not go their way, in view of the chaos that now surrounds the process.

Sanctions

The Committee has the powers of FIFA’s disciplinary code available to it, which allows it to fine, suspend or expel corrupt officials, depending on the gravity of the offence. The Committee chairman, Claudio Sulser, stated publicly that: “The ethics committee has a zero tolerance policy...to protect the image of FIFA and football administration in general”.

However, one of the issues is whether the Committee has the authority to expel a member of the FIFA Executive Committee. FIFA’s statutes state: ‘An installed member of the executive committee may only be removed from office by the FIFA Congress’.

Sepp Blatter, the President of FIFA, has confirmed that as the two committee members have not been re-instated, then only 22 FIFA executive members will cast a vote instead of the full 24. That scenario may also present legal issues as the bid nations signed binding

agreements with FIFA at the outset of the bidding competition which stipulate that the bid race will be decided by 24 members of the FIFA executive committee, not 22.

Following the alleged bribery and bidding scandals involving Zurich based FIFA, Switzerland is examining its own corruption laws. The Swiss sports minister has launched a review and may tighten the regulations. At present, the paying and receiving of bribes does not breach Swiss anti-corruption laws, as non-profit sporting entities are exempt from such legislation.

FIFA was never forced to consider whether it would actually suspend a bid for foul play. However, it is possible that Mr. Adamu and Mr. Temarii could seek a remedy in the Swiss civil courts.

Comment

FIFA is determined to restore confidence by swiftly dealing with the recent scandals. It (FIFA) must be seen to be acting decisively and with transparency to stave off potential legal action taken against it by a member association.

Nevertheless, the bid process has been tainted by the recent scandals and FIFA may have to radically rethink the whole process by which a host nation is chosen and also the individuals involved in the selection process to host the World Cup. If not, FIFA may find that the member associations choose not to go to the expense of bidding in future if the process is severely flawed and the officials involved are perceived to be corrupt.

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