

29.04.2013

**Statement of the Chairman of the FIFA Adjudicatory Chamber, Hans-Joachim Eckert, on the examination of the ISL case**

As the chairman of the adjudicatory chamber of the FIFA Ethics Committee, I have examined in detail the report dated 18.03.2013 presented to me in the matter of ISL. In July 2012, the FIFA Executive Committee asked the newly elected chairman of the investigatory chamber of the Ethics Committee, Michael J. Garcia, to examine the so-called ISL case. The reason for this request was the Order on the Dismissal of the Criminal Proceedings (“ODCP”) by the Department of Public Prosecutions of the Canton of Zug following the investigations against FIFA, Ricardo Terra Teixeira and Jean-Marie Faustin Havelange on account of breach of trust. The ODCP was dated 11.05.2010 and became public by a decision of the Swiss Federal Court dated 11.07.2012. A letter communicating the Executive Committee’s referral explained that although “the ISL case is closed from a legal point of view,” Mr Garcia was being asked “to examine the non-prosecution order from a mere moral and ethical standpoint.”

My examination refers to the material regarding ODCP and the Report of Examination of Michael J. Garcia (“Report of Examination”) and the attached documents, as more fully described below. As explained in the Report of Examination, the FIFA Code of Ethics sets the parameters of the Ethics Committee’s jurisdiction and authority. The ethics rules that are currently valid (i.e. the FIFA Code of Ethics) date from July 2012. The first FIFA Code of Ethics was dated 6 October 2004. Prior to that date, there were no ethics rules whatsoever. The ethics rules were revised in 2006 and again in 2009.

The Code of Ethics reaches conduct by football officials. Under Article 3, past conduct that would violate current Code of Ethics provisions may give rise to sanctions only if it violated a Code of Ethics in effect at the time of the infringement. Article 3 also provides that regardless of whether sanctions may be issued, the Ethics Committee may consider and draw appropriate conclusions concerning past conduct. In the current preamble of the FIFA ethics rules, it states, inter alia, that FIFA endeavours to prevent all illegal, immoral or unethical practices within the association.

I have established the following findings consistent with the Report of Examination:

FIFA is an association registered in the commercial register of the Canton of Zurich pursuant to article 60ff. of the Swiss Civil Code (ZGB) with headquarters in Zurich. Its statutes have been supplemented and/or amended several times. Reference is made to the currently applicable statutes. Fundamentally, the Congress acts as the highest legislative body, the Executive Committee as the executive body and the general secretariat as the administrative body. The President represents the association and is responsible for the implementation of decisions.

The Report of Examination spans approximately 30 pages, and the documents obtained during the course of the examination, including the transcripts of testimonies, comprise approximately 4,200 pages. The Report of Examination was transmitted to the chairman

of the adjudicatory chamber on 18.03.2013. The other documents (approximately 4,200 pages) were made available to him on 20.03.2013.

During the examination, a significant number of witnesses, lawyers acting in the proceedings and FIFA employees were interviewed, and many different kinds of documents were obtained. Among other persons, the President of FIFA, Joseph Blatter, was interviewed by Mr Garcia, as was current Executive Committee member Nicolas Leoz.

D)

**Preliminary remark:**

With regard to all of the established facts and circumstances, reference can be made to the statements in the ODCP. Considering these investigations and those of Mr Garcia, I have no doubt about the objective findings made there with regard to the companies and persons involved and to the contracts and cash flows established, as far as these could be ascertained.

In order to understand the so-called ISL case, it is necessary to at least give a rough description of the cash flows and their purpose, based not only on the Report of Examination but also on the ODCP.

It is clear that ISMM/ISL was, at the end of 2000, one of the most important media and marketing enterprises in the field of sports, and therefore from FIFA's point of view also seemed an appropriate business partner in the field of marketing of media rights for FIFA. ISMM AG acted as an umbrella organisation. Many of its subsidiaries performed different activities worldwide in the field of sports through independent media, marketing and service companies. The group acquired event rights from international sports federations with a general licence or on an agency basis ("rights-in"), developed integrated sports marketing concepts and "sold" these to sponsors, television channels or licensees ("rights-out").

From December 1997 to July 2000, FIFA concluded a number of contracts with ISL and various of its affiliates, through which licences and broadcast rights were transferred.

In this context, three-figure million sums in CHF and USD were agreed upon as compensation for FIFA. Among other persons, the current President Mr Blatter, but also various other former FIFA officials were authorized signatories for FIFA. ISL used a series of affiliated companies and foundations to make commission payments. It appears that in the late 1990s, ISL established a trust and a foundation under Liechtenstein law. Other purported ISL affiliates transferred funds to the foundation, which distributed the money to certain "beneficiaries."

Essentially, this money was to be used for the acquisition of rights. The money was meant for commissions, fees, finders-fees or additional acquisition payments and for "contributions to personalities and decision-makers in world sport, and also for the new acquisition or the extension of worldwide marketing rights".

**Note:**

From my point of view, this showed that the ISL Group had already made preparations before or at the same time of the first contractual agreements between FIFA and the ISL Group in order to cover up the expected payments and the cash flows, and thus to be able to direct unauthorised payments, i.e. payments without any genuine legal basis, via a network of companies and bank accounts. In this context, it must be considered that CHF 650 million was to be paid by ISMM to FIFA as a minimum fee between FIFA and ISMM for the award of the commercial rights for the 2002 World Cup, and CHF 750 million for the 2006 World Cup.

The documents revealed that upon conclusion of the contract with ISMM AG/ISL, FIFA had agreed that all revenues which arose from ISL's exploitation of the radio and television broadcasting rights were to be paid by ISL into a so-called special account at the Bank Nationale de Paris (BNP) in Basel. In my view, this is a common and appropriate practice among business persons for controlling cash flows, especially because FIFA stipulated that the BNP forward a copy of all transaction receipts to it.

**Note:**

From the objective occurrences established by the Swiss investigatory authorities, criminal structures within the ISMM/ISL Group started to circumvent the originally clear agreement with FIFA. The conduct of the responsible parties at ISMM/ISL and of the other subsidiaries and affiliates involved is to be seen as typical of a creative mixture of legal, i.e. contractually admissible activity, and deliberately fraudulent and disloyal conduct.

From money that passed through the ISMM/ISL Group, it is certain that not inconsiderable amounts were channelled to former FIFA President Havelange and to his son-in-law Ricardo Teixeira as well as to Dr. Nicolás Leoz, whereby there is no indication that any form of service was given in return by them. These payments were apparently made via front companies in order to cover up the true recipient and are to be qualified as "commissions", known today as "bribes".

Known payments in this regard were made between 1992 and May 2000.

A legal opinion from an independent Swiss attorney retained by Mr Garcia concludes that the acceptance of bribe money by Havelange, Teixeira and Leoz was not punishable under Swiss criminal law at that time. I agree with that determination.

However, it is clear that Havelange and Teixeira, as football officials, should not have accepted any bribe money, and should have had to pay it back since the money was in connection with the exploitation of media rights.

This does not change anything with regard to the morally and ethically reproachable conduct of both persons.

I agree with Mr Garcia's legal view that the Code of Ethics does not reach their conduct. As noted above, FIFA operated without a Code of Ethics until 2004. The known payments from ISL to Havelange and Teixeira occurred no later than 2000. Moreover, neither Havelange nor Teixeira held an official position within FIFA at the time the new ethics rules came into force. Mr Teixeira resigned from all football-related positions in March

2012, while Mr Havelange has long held solely an honorary position, which does not qualify him as an “official” under the Code of Ethics. Further, Mr Havelange resigned his position as Honorary President effective 18.04.2013.

As to Dr. Nicolás Leoz, he claimed that all of the money he received from ISL was donated by him to a school project, but only in January 2008 – eight years after he received it. In any case, Dr. Nicolás Leoz was not fully candid with the FIFA Executive Committee in a meeting held in December 2010 and with Michael J. Garcia when interviewed in this examination. By letter dated 24.04.2013, Dr. Nicolás Leoz informed FIFA about his resignation from the FIFA Executive Committee and the relevant Standing Committees, as well as President of CONMEBOL.

## II)

An essential point of the examination by Mr Garcia was FIFA’s conduct and that of President Blatter in the time after the events surrounding ISL had become known.

On 21.05.2001, ISMM and ISL went bankrupt.

In a chronological context, the persons responsible at FIFA, from my point of view, reacted promptly and also correctly to the bankruptcy of ISL and to the imminent or actual loss of money to which FIFA was entitled from the marketing of media rights.

As set forth in the ODCP, due to a complaint filed by FIFA on 28.05.2001 against persons named as being responsible for the management of ISL and against persons unknown, preliminary proceedings were instituted as early as 29.05.2001, and these proceedings were concluded on 18.03.2005 by the investigatory authorities in Switzerland. Nevertheless, on 08.08.2005 the Examining Magistrate’s Office in Zug initiated criminal investigations against persons unknown on account of disloyal management to the detriment of FIFA. The opening of these proceedings was based on findings from the proceedings mentioned above.

According to the ODCP, there are no indications that President Blatter received any commission payments from ISL, its former Chief Executive Officer Jean-Marie Weber, or others.

There are also no indications whatsoever that President Blatter was responsible for a cash flow to Havelange, Teixeira or Leoz, or that that he himself received any payments from the ISL Group, even in the form of hidden kickback payments.

It must be questioned, however, whether President Blatter knew or should have known over the years *before the bankruptcy of ISL* that ISL had made payments (bribes) to other FIFA officials.

During the examination by Mr Garcia, FIFA itself produced a UBS bank record, which showed that on 03.03.1997, an amount of CHF 1.5 million was transferred into a FIFA

account by ISL along with a note that the payment related to a guarantee for Mr Havelange. According to the payment notice, the recipient was Havelange c/o FIFA. It is undisputed that the former chief accountant of FIFA brought this to the attention of then-General Secretary Blatter, and the former arranged for the return transfer to ISL. President Blatter stated during his interview with Mr Garcia that he “couldn’t understand that somebody is sending money to FIFA for another person,” but at that time he did not suspect the payment was a commission.

President Blatter’s conduct could not be classified in any way as misconduct with regard to any ethics rules.

The conduct of President Blatter may have been clumsy because there could be an internal need for clarification, but this does not lead to any criminal or ethical misconduct.

Note:

In this context and with regard to the refusal of certain former employees to give information to Mr Garcia, a paragraph should be included in FIFA’s contracts of employment that there is still a duty to cooperate with the investigatory chamber even after termination of employment. Certainly all separation agreements should include such a clause and provide for penalties should there be a breach.

III)

#### Settlement 2004

##### 1)

The ODCP was based on the opening of an investigation in August 2005 by the investigatory authorities in Zug.

The subject matter of the investigation was, *inter alia*, the payment of CHF 2.5 million into the ISL bankruptcy estate in March 2004 and other agreements related thereto. In 2003, the bankruptcy administrators of ISL started a “recall action” from a number of companies which had facilitated the “commissions”, but also from shareholders of ISL. One of the accused in this regard was Mr Weber, the former ISL Chief Executive Officer.

Within the scope of his investigations, Mr Garcia obtained a legal opinion from the independent Swiss lawyer he retained on whether

- the FIFA officials who received commissions had been obliged to repay that money to FIFA, and
- whether FIFA had been obliged to demand such repayments.

**In the opinion of the independent Swiss lawyer, the FIFA officials had been obliged or would have been obliged to repay the wrongfully received commissions (author's note: legal basis of undue enrichment on grounds of a special position of trust).**

**In the absence of clear statutory requirements, FIFA was, however, under no obligation to demand the repayment of this money. It was within FIFA's discretion in applying its business judgment to decide whether to seek repayment.**

**2)**

**In 2003, the bankruptcy administrators for ISMM AG and ISL Worldwide began an attempt of judicial pursuit and enforcement of repayment claims against the companies/persons or shareholders that were involved in the commission payments. Consequently, the administrators proceeded against the Liechtenstein foundation, an entity that had transferred money to the foundation, and shareholders of ISMM AG. The subject matter of the action was the transfer of funds in May 1999 from an ISL affiliate as generally described above.**

**One of the accused in these proceedings was Mr Weber.**

**After many written drafts from various law firms for a possible financial settlement, the bankruptcy administrators and Weber reached a settlement on 27 February 2004, with the latter undertaking to pay CHF 2.5 million into the bankruptcy estate.**

**Part of the settlement was an agreement that "the direct and final recipients of the payment at issue, the latter to the extent that they are directly or indirectly linked with the football business, will not be made subject to any further actions for repayment".**

**On 17.04.2004, the sum in question, CHF 2.5 million, was paid by Teixeira and Havelange into an account of a Swiss lawyer, who then transferred the money into the bankruptcy account of ISL.**

**From a reasonable perspective, it seems obvious that the then highest officials at FIFA would have been involved in these settlement negotiations, and all the more so since a kind of final line could then be drawn with regard to the transgressions of Teixeira and Havelange, and in fact all football officials, whereby these persons had to repay to ISL part of the bribes they had received.**

**Even after the very intensive attempt of the investigating magistrate in this matter, Mr Hildbrand, and all further attempts of Mr Garcia to shed light on the facts and circumstances, parts remain in the dark. This is in particular attributed to the fact that a representative of the private bankruptcy estate of ISL stated that the Swiss lawyer involved in the 2004 settlement had indicated that he represented FIFA, and that FIFA had a legitimate interest in not being involved in unjustified speculation.**

**President Blatter in turn stated that he had not signed a power of attorney to authorise the Swiss lawyer to act either on behalf of FIFA or him personally, nor was he instructing the lawyer in the efforts related to the 2004 settlement.**

As the then investigating magistrate saw possible criminal offences by persons in charge at FIFA, he did all he could to clarify the origin of the CHF 2.5 million. Therefore, he searched FIFA headquarters, interviewed President Blatter and, as a result, was only able to determine that the CHF 2.5 million had come from Havelange and Teixeira, but he was not able to gain complete transparency about the network of persons and companies.

In this regard, it must be taken into consideration that a state investigator has vastly more power and authority, including compulsory measures, available to him than the investigatory chair of the Ethics Committee.

I agree with the analysis of Mr Garcia that the accomplishment and the contents of the settlement may very well be seen to have been affected by a conflict of interest. FIFA used its attorney to settle with the ISL bankruptcy trustees through Mr Weber, using money that came in part from a current Executive Committee member, Mr Teixeira, who had received a substantial portion of the commissions. In return, FIFA obtained a release of potential further action against all football officials. Then, apparently as part of the settlement, FIFA filed a “declaration of disinterest” dismissing the claim it initiated against ISL in 2001 to recover money for FIFA. It could not be determined with certainty whether the Swiss lawyer who helped coordinate the 2004 settlement had involved Mr Blatter in the deliberations and decisions.

At the time of negotiation of the settlement, the conclusion of the settlement and the realisation of the settlement, there were no ethics rules, even though these were being drafted (autumn of 2004).

Therefore, from a formal point of view, there are also no offences which have to be pursued further.

Once again, in this regard, these actions did not prompt any criminal prosecutions, and under civil law the negotiation of settlements is covered by freedom of contract, even with unusual clauses. In making its assessment, the company also has to consider whether to further pursue possibly justified claims and the ensuing risk of damage to its public image. It is not the Ethics Committee’s role to second-guess those types of business decisions.

#### IV)

With regard to whether the investigations conducted by the investigatory authorities in Zug were dropped or not pursued further against a monetary condition, it cannot be established that President Blatter acted alone on his own authority when making any form of decisions to the detriment of FIFA and/or that the assets of the association were therefore at risk. The consent to an offer made by the investigatory authorities, namely to drop the proceedings against payment of a monetary condition in accordance with Swiss law pursuant to article 53 of the Swiss Criminal Code, was examined by several renowned

law firms which advised FIFA. This provision corresponds to a stipulation under criminal procedural law which exists in almost all of Europe, and which serves the purpose of concluding major proceedings with a sense of proportion.

The basic decision to consent to such an agreement, even if it is linked to not inconsiderable monetary conditions, is a business-policy decision, as part of which the advantages and disadvantages must be assessed.

**Summary:**

It may well be the case that ethics rules could have been introduced earlier at FIFA and that there were no sufficient control mechanisms in earlier years, but this does not lead to any violation of ethical standards, which only existed as rules from October 2004.

As became evident in major corruption proceedings regarding significant commercial enterprises in Germany or in the USA after in-house bribe payments for obtaining contracts had become known, control mechanisms were introduced, compliance departments were set up, and the employees in question were also removed from the enterprise by way of termination agreements.

Since the occurrences surrounding ISL have become known, various high-ranking FIFA officials have resigned from their positions.

**I find as follows:**

- 1. The ISL case is concluded for the Ethics Committee.**
- 2. I note that Mr. Havelange resigned from his position as Honorary President effective from 18.04.2013 and that Dr. Nicolás Leoz resigned from his positions as a FIFA Executive Committee member, as a FIFA standing committee member and as CONMEBOL President effective from 24.04.2013. Hence, any further steps or suggestions are superfluous.**
- 3. No further proceedings related to the ISL matter are warranted against any other football official.**