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New FCPA Guidance May Reduce Risks for International Business

Just one week after President Barack Obama's re-election, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have issued long anticipated guidance on the Foreign Corrupt Practices Act (FCPA).

Inspired by the United Kingdom's effort at anti-corruption guidance, this new FCPA Resource Guide is an excellent summary of the law, DOJ policy and decades of prosecution, confirming what has been known by anti-corruption practitioners for years. Initial professional analysis has been critical, particularly from the anti-corruption bar and those lobbying to change the FCPA. But anyone looking for a compressive, straight-forward discussion of the most recognized anti-corruption law will find it useful. If nothing else, it bluntly tells businesses that FCPA prosecutions will continue to be vigorously pursued.

The Resource Guide can be a powerful tool for in-house compliance specialists and general counsel who are faced with focusing business leaders on the risks presented by the massive and growing effort on anti-corruption enforcement pursued by DOJ, the SEC and other agencies around the world. Business leaders and their compliance professionals will find the direct language, detailed hypotheticals and real examples of both successful prosecutions and cases DOJ declined to pursue in the Resource Guide useful in analyzing what conduct should be avoided. It will also help those who seek to improve corporate compliance as they address the skeptical employee challenging the law's application and those frozen into inaction by fear that any international business opportunity should be avoided because of the inherent risks associated with communities where bribery is widely experienced. Careful preparation can open economic opportunities. The Resource Guide can be an important tool in that effort.

Equally important, the new Resource Guide highlights the comprehensive anti-corruption focus of DOJ and the SEC. Some are *still* surprised that this is not just a law criminalizing the act of passing cash to a foreign government minister. The guide provides a comprehensive discussion of the accounting provisions, of course, but it also contains key insights into the other laws that prosecutors and regulators use in conjunction with the FCPA. The most prominent example of the vast and sometimes unexpected reach of DOJ's anti-corruption effort is the Travel Act, which the department has used to successfully prosecute domestic, private bribery of other business people. This act and its reach is highlighted along with other important prosecutorial tools, such as the money laundering statutes, the federal fraud statutes, tax statutes and prohibitions against false statements.

What This Means to You

Although the Resource Guide does highlight existing explanations for how DOJ makes its enforcement decisions, including a discussion of how it evaluates effective compliance, it does not provide a "one-size-fits-all" compliance program. It only highlights general cross-border risks and prosecution priorities. Husch Blackwell has significant experience in identifying cross-border risks based on industry, geography and corporate structure. Our cross-border experts help clients develop effective and comprehensive anti-corruption programs, provide FCPA and U.K. Bribery Act training, conduct internal investigations and defend corporations and individuals charged with violating the FCPA and related statutes. Our robust White Collar, Internal Investigations & Compliance team, our lawyers in our International Practice team and our Customs & Trade attorneys are ready to assist clients in addressing anti-corruption and other cross-border issues. Careful preparation can effectively mitigate risks and allow business opportunities to take advantage of a global market.

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