

THOUGHT LEADERSHIP

LEGAL UPDATES

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DOJ Poised to Reboot FCPA Investigations and Enforcement

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Issued on February 10, 2025, Executive Order 14209 (“Pausing Foreign Corrupt Practices Act Enforcement To Further American Economic and National Security”) called on the Department of Justice (DOJ) to “review guidelines and policies governing investigations and enforcement actions” in connection with the Foreign Corrupt Practices Act (FCPA). During the review period, the EO directed DOJ to “cease initiation of any new FCPA investigations or enforcement actions.” On June 9, 2025, DOJ responded with the announcement of new FCPA enforcement guidelines.

These new guidelines attempt to align FCPA enforcement with EO 14029’s stated policy objectives of reducing the regulatory burden on U.S. companies and targeting enforcement on “conduct that directly undermines U.S. national interests.” In effect, the guidelines resume DOJ’s FCPA enforcement but potentially narrow the scope of those investigations.

Factors DOJ will use to determine enforcement approach

The guidelines specify a “non-exclusive” list of factors that the department will consider in making a determination whether to pursue FCPA investigations and enforcement.

Cartels and Transnational Criminal Organizations (TCOs). The guidelines highlight the Trump administration’s pursuit of the “total elimination” of criminal activities tied to cartels and TCOs. Accordingly, the guidelines prioritize enforcement when FCPA violations intersect with cartel/TCO activity, including their use of or influence over state-owned enterprises. Prosecutors are instructed to look for conduct that involves money laundering or creation of shell companies that benefit cartels or TCOs.

Interestingly, DOJ investigators are also to look for misconduct involving foreign officials or employees of state-owned entities who received bribes from cartels or TCOs. This latter example appears to require evidence of at least two corrupt actions: a bribe paid by a cartel or TCO and then a separate FCPA violation involving the recipient of that bribe.

Fair access and economic injury. The guidelines direct prosecutors to consider “whether the alleged misconduct deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals.” Here, DOJ’s policy expressly does **not** focus on the nationality of alleged violators, but on whether the FCPA allegation involves demonstrable harms to other U.S. companies or citizens.

National security. Citing national security priorities, the guidelines state that “FCPA enforcement will therefore focus on the most urgent threats to U.S. national security resulting from the bribery of corrupt foreign officials involving key infrastructure or assets.” Prosecutors have been instructed to prioritize investigations that involve misconduct connected with, for example, access to critical minerals and deep-water ports in countries where governmental authority is weak and corruption is rampant.

Serious misconduct. The guidelines direct prosecutors to focus on “alleged misconduct that bears strong indicia of corrupt intent tied to particular individuals, such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice.” The guidelines explicitly contrast such alleged misconduct with “routine business practices or the type of corporate conduct that involves de minimis or low-dollar, generally accepted business courtesies.” The guidelines also urge prosecutors to consider the likelihood that foreign authorities are willing and able to investigate and punish the same misconduct.

Impacts on compliance

In a June 10 speech before American Conference Institute, DOJ’s Criminal Division head Matthew R. Galeotti referred to the guidelines as directing “common-sense principles” and further clarified the guidelines’ impact on the scope of enforcement, commenting that “conduct that genuinely impacts the United States or the American people is subject to potential prosecution by U.S. law enforcement. Conduct that does not implicate U.S. interests should be left to our foreign counterparts or appropriate regulators.”

While they specify areas of prosecutorial interest for DOJ’s FCPA enforcement efforts, the new guidelines do not appear to require substantial changes to the compliance programs of U.S. companies, which already address issues of serious misconduct. The guidelines do signal a potential narrower scope for DOJ’s FCPA enforcement; however, they are clear in asserting the department’s

application of prosecutorial discretion based on the “totality of circumstances,” a position that is substantively similar to that of foregoing administrations.

What this means to you

U.S. companies with a commercial presence abroad should maintain vigilance in their FCPA and anti-bribery compliance programs. High-risk countries for FCPA violations remain a focal point under the new policies, and compliance programs should continue to focus on those areas. U.S. companies also should evaluate their operations in countries that have known cartel or TCO activity and avoid interactions with persons or organizations that have connections to cartels or TCOs.

Contact us

If you have questions regarding the DOJ’s new FCPA guidelines, please contact Cormac Connor, Matt Diehr, Rebecca Furdek, or your Husch Blackwell attorney.