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CLIENT ALERT

DOJ Issues New FCPA Enforcement Guidelines Focused on U.S. Economic and National Security Interests

June 12, 2025

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On June 9, 2025, the U.S. Department of Justice ("DOJ" or the "Department") released its highly anticipated Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA) ("Guidelines"). The Guidelines make clear that FCPA enforcement has resumed and will continue, and are aimed at aligning enforcement with areas of focus laid out in President Trump's February 10, 2025 Executive Order "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security" ("Executive Order"; see our prior Client Alert here), and providing insight into the circumstances in which the Trump administration will open, investigate, and look to resolve FCPA matters.

Overall, there is little of surprise in the new Guidelines, particularly against the backdrop of Attorney General Pamela Bondi's February 5, 2025 "Total Elimination of Cartels and Transnational Criminal Organizations" memorandum, the Executive Order, and last month's revisions to DOJ's while collar enforcement priorities (see our prior Client Alert

here). In remarks coinciding with the release of the new Guidance at the American Conference Institute Conference on Global Anti-Corruption, Ethics & Compliance, Matthew Galeotti, head of DOJ's Criminal Division, said the "through-line is that these Guidelines require the vindication of U.S. interests," and that U.S. enforcement efforts will focus on "conduct that genuinely impacts the United States or the American people. . . [with c]onduct that does not implicate U.S. interests. . . left to our foreign counterparts or appropriate regulators."

Below we address the new FCPA case evaluation criteria and their implications for companies active in, and doing business with, the U.S., when taken alongside the proliferation of enforcement directives and guidance issued to date under the second Trump administration.

Four New Areas of Enforcement Focus for the Prosecution of FCPA Cases

All new FCPA investigations and enforcement actions going forward will require authorization by the Assistant Attorney General for the Criminal Division or a more senior Department official. When evaluating potential FCPA enforcement actions, prosecutors are directed to consider four non-exhaustive factors—the presence of any of which will tend in favor of prosecution under the new administration:

1. **Involvement of Cartels or Transnational Criminal Organizations (TCOs).** Consistent with Attorney General Bondi's February 5, 2025 memorandum directing the Criminal Division's FCPA Unit to prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs, the Guidelines make Cartel or TCO involvement in a potential fact pattern a "primary consideration" for prosecution decisions. Examples include where alleged misconduct is associated with the criminal operations of a cartel or TCO, utilizes money launderers or shell companies associated with cartels or TCOs, or is linked to employees of state-owned entities or other foreign officials who have received bribes from cartels or TCOs.

2. **Protecting the Economic Interests of U.S. Companies.** Prosecutors are also directed to prioritize cases where 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." The Guidance refers to the fact that historically many of the most significant FCPA enforcement actions, whether measured by scope of misconduct or size of the monetary penalties imposed, have involved foreign companies. The prosecution of demand-side bribery under the recently enacted Foreign Extortion Prevention Act ("FEPA") is also specifically highlighted as a potential tool to target foreign officials' demanding bribes from U.S. companies.

3. **Relevance to U.S. National Security Interests.** Bribery that may impact U.S. national security will be prioritized, including matters involving critical infrastructure or assets, or the defense or intelligence sectors. Notably, this area remains an enforcement priority even following the administration's recent disbanding of the Corporate Enforcement Unit in DOJ's National Security Division.

4. **Focus on "Serious Misconduct" as Opposed to "Routine Business Practices."** Finally, prosecutors are directed to prioritize misconduct that bears strong indicia of corrupt intent tied to particular individuals, such as: substantial bribe payments, sophisticated concealment, fraudulent conduct in furtherance of the bribery scheme, or efforts to obstruct justice. The Guidelines expressly direct prosecutors away from cases involving "routine business practices or the type of corporate conduct that involves de minimis or low-dollar, generally accepted business courtesies," and reference the FCPA's exception for facilitation payments and the affirmative defenses for bona fide business expenses and payments that are lawful under local law.

What This Means for Companies

Looking ahead, while Attorney General Bondi's February 5 Memorandum and the Executive Order raised significant questions about the future of FCPA enforcement, the Guidelines confirm it will indeed continue, albeit with a redirection in focus as discussed above. In light of the new DOJ Guidelines and related commentary, it appears likely we will see:

- **DOJ bringing fewer, higher-impact FCPA cases (while impacts on SEC enforcement remain unclear).** Going forward, less clearly egregious corporate travel and entertainment cases may fail to meet DOJ's standard of "serious misconduct" set by the Guidelines. Similarly, cases involving bribes paid in connection with permits or licenses that are unrelated to the core business of a company may be less of a focus. Significantly, it still remains to be seen how the SEC will respond, whether formally or informally, when considering its own FCPA enforcement priorities, including on its approach to cases focused on conduct amounting to internal accounting control violations absent clear indicia of bribery taking place.

- **Increased risk for foreign entities subject to FCPA jurisdiction that compete with U.S. companies for business abroad.** While the Guidelines explicitly state that FCPA enforcement will not "focus on particular individuals or companies on the basis of their nationality," given the direction to prioritize harm to U.S. businesses we expect to see DOJ continuing its historic practice of aggressively pursuing non-U.S. companies under the FCPA. Foreign companies in active competition with U.S. companies abroad should assess their exposure to potential FCPA jurisdiction and prioritize robust internal compliance training and controls to guard against any increased risk.

- **Increased risk to companies that do business in regions with significant cartel or TCO activity.** The Guidance makes clear that DOJ's focus on cartel and TCO activity will continue to be a major part of FCPA enforcement going forward. Companies that operate in these regions should tailor their compliance programs to address those risks, including by enhancing due diligence of third parties and intermediaries.

- **Continued coordination by DOJ's FCPA unit with foreign and domestic enforcement authorities (perhaps increasing ties in LATAM).** The Guidance refers to the importance of U.S. coordination with, and support for, international law enforcement efforts combatting corruption. In this vein, the Guidance specifically directs prosecutors to prioritize cases that warrant investigation by U.S., as opposed to foreign,

authorities by considering the likelihood that an appropriate foreign law enforcement authority would itself be willing and able to investigate and prosecute the same alleged misconduct. In such cases, according to Mr. Galeotti's remarks, ". . . the Criminal Division won't hesitate to work with our foreign counterparts or domestic regulators to provide assistance and ensure that those countries and regulators can vindicate their interests and pursue their mandates." Notably, this also follows Mr. Galeotti's instruction to DOJ personnel to continue following the "anti-piling on" policy first established in 2018, aimed at avoiding duplicative monetary penalties across different jurisdictions.

While it is still too early to predict exactly how enforcement by non-U.S. and other federal agencies will develop, as noted in our recent Client Alert (available here), recent announcements have seen authorities in the U.S. and abroad already beginning to step into the potential gap created by DOJ's shift in priorities. With the focus on TCOs and cartels, it is also possible we will see increased enforcement and coordination with authorities across Latin America.

- **More (and more powerful) arguments available to self-disclosing companies to argue for declinations.** Defense lawyers may be able to make stronger arguments at an earlier stage for a declination where a company self-discloses, cooperates, and remediates, and the particular fact pattern meets none of the criteria discussed above—that is, e.g., cases with no cartel tie, no identifiable or direct harm to American business, and no intersection with national security concerns. This is consistent with company self-disclosure and cooperation taking even more of a center stage in the recently revised Corporate Enforcement Policy, with a definite declination (rather than just a presumption) available in certain circumstances. Mr. Galeotti flagged robust whistleblower activity since the DOJ issued significant revisions to its corporate enforcement policies last month, including recent tips received of potential corruption and FCPA violations, procurement fraud, and healthcare fraud.

- **A potential shift in approach on corporate knowledge requirements.** Taking a more corporate-friendly posture on the FCPA's knowledge requirement in corporate cases, the Guidance prioritizes prosecuting individual wrongdoers and "not attribute[ing] nonspecific malfeasance to corporate structures," a point also emphasized by Mr. Galeotti's remarks when he discussed DOJ's focus on "specific misconduct of individuals, rather than collective knowledge theories." Taken with the recent DOJ policy updates limiting the use of corporate monitors, the quality of a company's compliance program may also be less central to decisions about charging and negotiating a resolution going forward. Prosecutors are more generally instructed to "consider collateral consequences, such as the potential disruption to lawful business and the impact on a company's employees, throughout an investigation, not only at the resolution phase."

As the enforcement landscape continues to evolve and we continue monitoring DOJ policy updates and outcomes please reach out to the contacts below with any questions.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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