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Memorandum

FCPA Enforcement Is Narrowed, but Continues: New Guidelines Chart DOJ's Path Forward

June 11, 2025

Background

On June 9, 2025, Deputy Attorney General Todd Blanche published a memorandum (the "Memorandum") establishing guidelines for investigations and enforcement actions brought by the Department of Justice ("DOJ") under the Foreign Corrupt Practices Act ("FCPA"). The Memorandum implements President Trump's February 10, 2025 Executive Order 14209, titled *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (the "Executive Order"), which directed DOJ to "(i) cease initiation of any new FCPA investigations or enforcement actions, unless the Attorney General determines that an individual exception should be made; (ii) review in detail all existing FCPA investigations or enforcement actions and take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives; and (iii) issue updated guidelines or policies [governing investigations and enforcement actions under the FCPA], as appropriate, to adequately promote the President's Article II authority to conduct foreign affairs and prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources." Executive Order, § 2.

Enforcement Objectives

The Memorandum provides more specific guidance regarding the policy objectives set forth in the February Executive Order. After months of some uncertainty, it confirms that FCPA enforcement is here to stay,[1] but that there will be a fundamental shift in DOJ's exercise of prosecutorial discretion. As a general matter, the Memorandum emphasizes that DOJ will prioritize investigations where individual criminal conduct is clear, as opposed to "collective knowledge"-type theories where proof of corruption is vague, or cases where companies are punished more for compliance lapses under an expansive interpretation of willful blindness regarding what some third-party consultant or agent might have done. The Memorandum also states that DOJ will conduct investigations "expeditiously," and will consider "collateral consequences" resulting not only from any monetary resolution but also from "the potential disruption to lawful business and the impact on a company's employees,

[1] *The Wall Street Journal* reported that DOJ's FCPA Unit will have 25 prosecutors; and while this number reflects a reduction from staffing levels before the Executive Order, it appears that there will continue to be a meaningful allocation of resources within DOJ to the investigation and prosecution of FCPA cases.

throughout an investigation." In other words, DOJ will take into account the disruptive cloud that often hangs over a company subject to a multi-year criminal corruption investigation. This is certainly welcome news.[2]

More specifically, the Memorandum enumerated a non-exhaustive list of factors that prosecutors will consider when determining whether to initiate an FCPA investigation or prosecution:

- Whether the alleged misconduct is directly or indirectly associated with a cartel or a transnational criminal organization (TCO), including if it utilizes money launderers or shell companies used by cartels or TCOs.
- Whether the conduct unfairly disadvantages or results in economic injury to law-abiding U.S. companies or individuals (*e.g.*, bribes paid to secure a contract with a foreign government where law-abiding U.S. companies are competing bidders). (The Memorandum also noted that prosecutors should similarly consider whether specific and identifiable U.S. entities or individuals have been harmed by demands for bribes when considering investigations and prosecutions under the Foreign Extortion Prevention Act, 18 U.S.C. 1352.)
- Whether the conduct occurs in key national security sectors such as defense, intelligence, or critical infrastructure.
- Whether the investigation involves "serious misconduct." The Memorandum states that enforcement should not focus on "routine" or "generally accepted" business practices and "courtesies" or conduct involving low dollar amounts. By contrast, enforcement is more appropriate where there is "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."
- Whether a foreign law enforcement authority will investigate and prosecute the same alleged misconduct. This signals that DOJ will be more likely to stand-down if a foreign authority with greater equities in the matter stands-up.

Related to the Memorandum, on June 10, Matthew R. Galeotti, Head of DOJ's Criminal Division, gave a speech at the American Conference Institute outlining its practical impact and also commenting more broadly on the Criminal Division's enforcement plan for white-collar crime, published in a memorandum dated May 12 (which we wrote about here). Galeotti reemphasized the prior recent guidance, observing that DOJ will now grant a declination—not just a presumption of a declination—to companies that self-report, cooperate, and remediate, absent certain aggravating circumstances. In addition to encouraging self-reporting, he added that he "will closely scrutinize any [voluntary self-disclosure] that is not recommended for a . . . declination," and that "[t]he circumstances would have to be truly aggravating and sufficient to outweigh the fact that the company voluntarily

[2] Memorandum (June 10, 2025), available here.

came forward."[3] Galeotti also emphasized the DOJ Criminal Division's goals to reduce the use of compliance monitors, and to encourage greater *efficiency* in investigating, charging, and trying criminal cases.

Looking Ahead

The Memorandum and Galeotti's latest remarks provide additional insight into the practical impact of the February Executive Order, supplementing the Criminal Division's enforcement plan for white-collar crime released in May. For example, with respect to national security concerns, the Memorandum specifically states that conduct impacting Americans' rights to "critical minerals, deep-water ports, or other key infrastructure or assets[,]" and "sectors like defense, intelligence, or critical infrastructure" are high priorities for FCPA enforcement. Naming specific targets of these actions helps clarify where prosecutors will focus their efforts, but companies should be conscious of additional sectors that implicate these and other national security concerns. The types of activities implicated under this directive remain broad.

There is also potential tension between the Memorandum's guidance disfavoring prosecutorial enforcement of lower-dollar value bribes, and the policy of strong enforcement in matters with direct or indirect connections to cartels and TCOs. Companies should remain particularly vigilant regarding operations in regions where such organizations have influence.

Additionally, as we wrote about previously here, another open question is to what extent DOJ will use the FCPA to investigate and pursue charges against U.S. companies that compete unfairly against other U.S. companies, or whether the focus will be instead on unfair competition between non-U.S. companies (that are U.S. issuers or otherwise conduct activities in the U.S.) and U.S. companies. The most logical reading of the Memorandum is that DOJ will focus on whether law-abiding U.S. companies are victimized or U.S. national security interests are implicated, such that both U.S. and non-U.S. corrupt actors could face scrutiny.

If the Memorandum is followed, we anticipate that future FCPA investigations should be faster and with an emphasis on high-value financial transactions. Companies subject to investigations that drag on may now have more success in pushing back against delays and scope creep. With respect to self-disclosure of potential FCPA violations, this latest guidance continues to emphasize its potential benefits—and Galeotti notes that the Criminal Division has already received several self-reports since its May guidance, as well as robust whistleblower reports. But companies, along with their counsel, will continue to grapple with DOJ's new guidance to determine whether particular circumstances warrant the stated benefits—and associated risks—of self-disclosure. Given the novel nature of these policy initiatives, companies and counsel should exercise caution, as there may be further changes to come once DOJ begins to work under these guidelines.

[3] Remarks (June 10, 2024), available here.

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