

DOJ issues new guidelines on FCPA enforcement

June 12, 2025 | Client Update | 8-minute read

On June 9, 2025, DOJ announced new guidelines for the investigation and enforcement of the Foreign Corrupt Practices Act (FCPA). The Head of DOJ's Criminal Division also provided additional context for the guidelines and spoke about other developments and policies of the Criminal Division in his June 10, 2025 remarks.

On June 9, Deputy Attorney General Todd Blanche [issued](#) the *Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act* (Guidelines). These Guidelines were issued in response to President Trump's February 10, 2025 [Executive Order](#) titled *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, which paused FCPA enforcement pending the release of this new guidance (see our previous update on the Executive Order [here](#)). Matthew Galeotti, the Head of DOJ's Criminal Division, which oversees DOJ's FCPA enforcement, provided some additional context for the Guidelines during [remarks](#) on June 10 at the ACI Global Anti-Corruption, Ethics & Compliance conference in New York City.

The Guidelines addressed a number of questions raised in the Executive Order, including whether FCPA enforcement would proceed only against foreign companies, and whether enforcement would be limited to only those circumstances where the bribes involved cartels and transnational criminal organizations (TCOs). Overall, the Guidelines make clear that FCPA enforcement will continue during this Administration, but enforcement will be focused on core areas of concern for the Administration and, in particular, issues that involve the "vindication of U.S. interests," as Mr. Galeotti noted in his remarks.

Specifically, the Guidelines set out four non-exhaustive areas of focus for FCPA investigations or enforcement actions where bribery negatively impacts U.S. interests. These areas of focus include cases involving: (i) cartels and TCOs, even if indirectly or tangentially, (ii) bribes paid in connection with a bid involving a U.S. company (regardless of whether the bribe-paying company is American or foreign), (iii) U.S. national security interests, including corruption in sectors such as defense, intelligence, and critical infrastructure, and (iv) alleged misconduct that bears strong indicia of corrupt intent, rather than conduct that involves routine business practices or low-dollar, generally accepted business courtesies.

More broadly, the Guidelines instruct DOJ prosecutors to focus on cases "in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures." DOJ also will "proceed as expeditiously as possible in their investigations" and "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."

Factors for prosecutors to consider

The Guidelines direct DOJ prosecutors to consider four non-exhaustive factors when evaluating whether to pursue FCPA investigations and enforcement actions.

1. Elimination of cartels and TCOs

The first factor enumerated in the Guidelines is the elimination of cartels and TCOs, consistent with the President's January 20, 2025 [Executive Order](#) and Attorney General Pam Bondi's corresponding [memorandum](#) (see our previous update on the Executive Order [here](#)). Although previously it was not clear whether FCPA enforcement would focus only on bribes paid to or by cartels and TCOs, the Guidelines clarified that DOJ would adopt a broad view of what conduct may be connected to cartels and TCOs. In particular, the Guidelines direct prosecutors to consider not only whether the alleged misconduct "is associated with the criminal operations of a Cartel or TCO," but also whether the alleged misconduct "utilizes money launderers or shell companies that engage in money laundering for 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. Safeguarding fair opportunities for U.S. companies

The second factor enumerated in the Guidelines is the safeguarding of opportunities for U.S. companies to compete abroad. The Guidelines emphasize that "companies that bribe foreign officials to obtain business can put their law-abiding competitors, including U.S. companies, at a serious economic disadvantage," as well as "skew markets and disadvantage law-abiding U.S. companies and others for many years." The Guidelines thus 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." Moreover, for investigations which concern the "demand side" of bribery under the Foreign Extortion Prevention Act, prosecutors are similarly directed to consider whether U.S. entities "have been harmed by foreign officials' demands for bribes."

The Guidelines explicitly note that FCPA enforcement will not focus "on particular individuals or companies on the basis of their nationality," addressing the question of whether the FCPA would be used to target foreign companies and not U.S. companies, an approach that could potentially run afoul of the O.E.C.D. Convention Against Bribery. In his remarks, Mr. Galeotti emphasized this point, noting that "vindication of U.S. interests . . . is not about the nationality of the subject or where the company is headquartered."

3. Advancing U.S. national security

The third factor enumerated in the Guidelines is the advancement of U.S. national security interests. The Guidelines find that when "corruption occurs in sectors like defense, intelligence, or critical infrastructure, American national security interests may be harmed." In turn, the Guidelines provide that FCPA enforcement will "focus on the most urgent threats to U.S. national security resulting from the bribery of corrupt foreign officials involving key infrastructure or assets."

4. Prioritizing investigations of serious misconduct

The fourth factor enumerated in the Guidelines is the prioritization of investigations that concern serious misconduct. The Guidelines provide that FCPA enforcement should be focused "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." FCPA enforcement should not, by contrast, "focus on alleged misconduct involving routine business practices or the type of corporate conduct that involves de minimis or low-dollar, generally accepted business courtesies."

Additional guidance

The Guidelines and Mr. Galeotti's remarks also provide additional guidance and outline some procedural changes:

- In order to initiate new FCPA investigations and enforcement actions, the Guidelines require authorization "by the Assistant Attorney General for the Criminal Division (or the official acting in that capacity) or a more senior Department official."
- Prosecutors are directed not only to "proceed as expeditiously as possible in their investigations" but also to "consider collateral consequences, such as the potential disruption to lawful business and the impact on a company's employees, throughout an investigation."
- In order "[t]o prioritize cases that warrant investigation [by U.S. authorities]," the Guidelines direct prosecutors to "consider the likelihood (or lack thereof) that an appropriate foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct." Mr. Galeotti remarked, moreover, that "[c]onduct that does not implicate U.S. interests should be left to [DOJ's] foreign counterparts or appropriate regulators." That said, Mr. Galeotti further explained that "in those cases, the Criminal Division won't hesitate to work with [its] foreign

counterparts or domestic regulators to provide assistance and ensure that those countries and regulators can vindicate their interests and pursue their mandates.”

- Prosecutors are also directed to “focus on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures.” As Mr. Galeotti explained in his remarks, the Guidelines direct “common-sense principles, such as focusing on specific misconduct of individuals, rather than collective knowledge theories.”
- Additionally, Mr. Galeotti remarked that “the Criminal Division has not and will not close meritorious investigations or dismiss meritorious cases.” He also emphasized that “companies that voluntarily self-report, cooperate, and remediate . . . will receive a declination, not just a ‘presumption’ of a declination.
- With regard to monitors, Mr. Galeotti noted that “the Criminal Division has proceeded with some monitorships but terminated others where circumstances permitted companies to achieve compliance with our agreements on their own.” He explained that “[m]onitors are meant to be a temporary bridge and accountability measure to move a company quickly and efficiently to full compliance.”

Key takeaways

As usual, it will be important to observe how these Guidelines are implemented in practice to gain a better understanding of what FCPA enforcement will look like over the next three and a half years. That said, there are several noteworthy takeaways from the Guidelines:

- The Guidelines make clear that FCPA enforcement will continue under this Administration—indeed, FCPA enforcement is listed as one of DOJ’s top 10 priorities in Mr. Galeotti’s May 12, 2025 [memorandum](#) titled *Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime*. As a result, companies would be well-advised to continue emphasizing a strong anticorruption compliance program, including because such a program also overlaps with companies’ efforts to prevent other misconduct that are priorities of this Administration (e.g., sanctions, national security, and tariff and customs fraud).
- Although the Guidelines emphasize a focus on U.S. economic and national security interests, FCPA enforcement will not be limited to foreign companies or narrow bands of corruption related to cartels and TCOs. Any company or individual could find themselves in the crosshairs of DOJ’s current enforcement efforts depending on the nature of the scheme.
- Given the Guidelines’ specific mention of certain sectors and how broadly DOJ will view corruption related to cartels and TCOs, companies should pay particular attention to the industry focus (defense, intelligence, and critical infrastructure), as well as countries with a greater risk for cartel and TCO activity.
- Although the Guidelines are specific to DOJ and not the SEC (which is responsible for civil enforcement of the FCPA against U.S. issuers), given this Administration’s view that independent agencies like the SEC must follow Administration policies and priorities, and given recent statements by SEC officials that they will follow DOJ’s lead on FCPA enforcement, it is likely that the SEC will adopt a very similar approach to FCPA enforcement. It remains to be seen, however, if the SEC will investigate and/or pursue some cases that it believes warrant a civil remedy even if not a criminal one.
- Companies that find themselves under scrutiny from DOJ or the SEC for FCPA violations (or other violations, for that matter) should consider whether, when, and how to raise the effects that the investigation has on the company’s business, resources, and employees. Likewise, companies should consider whether their case involves clear misconduct by a particular employee or agent, or whether DOJ or the SEC is basing liability on a more general theory of corporate malfeasance. DOJ and the SEC may be less likely to pursue collective knowledge theories and instead focus on the specific misconduct of individuals.
- Although DOJ may be less likely to investigate and prosecute conduct that does not implicate U.S. interests, DOJ is nonetheless likely to work with and assist its foreign counterparts and domestic regulators.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres

+1 212 450 4724
greg.andres@davispolk.com

Sidney Bashago

+1 212 450 4826
sidney.bashago@davispolk.com

Martine M. Beamon

+1 212 450 4262
martine.beamon@davispolk.com

Robert A. Cohen

+1 202 962 7047
robert.cohen@davispolk.com

Daniel S. Kahn

+1 202 962 7140
daniel.kahn@davispolk.com

Neil H. MacBride

+1 202 962 7035
neil.macbride@davispolk.com

Tatiana R. Martins

+1 212 450 4085
tatiana.martins@davispolk.com

Fiona R. Moran

+1 202 962 7137
fiona.moran@davispolk.com

Paul J. Nathanson

+1 202 962 7055
+1 212 450 3133
paul.nathanson@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.