

White Collar Update: D.C. Circuit Reaffirms Prosecutors' Authority over Deferred Prosecution Agreements

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A recent Court of Appeals decision sharply limits the authority of judges to reject Deferred Prosecution Agreements (“DPAs”). On April 5, 2016, the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) overturned a decision by the D.C. District Court that rejected a DPA between the Department of Justice (“DOJ”) and Fokker Services B.V. (“Fokker”). The D.C. Circuit held that the district court had erred by rejecting the DPA based on concerns that it was too lenient, thereby interfering with “the Executive’s long-settled primacy over charging decisions,” which according to the D.C. Circuit includes the decisions to pursue a DPA and to define its terms. The D.C. Circuit also recognized that DPAs are an “increasingly important tool” in government resolutions that could be jeopardized by such judicial intervention.

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

Martine M. Beamon

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

Angela T. Burgess

+1 212 450 4885
angela.burgess@davispolk.com

Neil H. MacBride

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

Denis J. McInerney

+1 212 450 4477
denis.mcinerney@davispolk.com

Neal Potischman

+1 650 752 2021
neal.potischman@davispolk.com

Linda Chatman Thomsen

+1 202 962 7125
linda.thomsen@davispolk.com

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