

A Resource Guide to the U.S. Foreign Corrupt Practices Act Fact Sheet

- The *Guide* is the product of extensive efforts by experts at DOJ and SEC. It is 120 pages long and significantly more detailed and comprehensive than its predecessor, the “Lay Person’s Guide to the FCPA.”
- The *Guide* is an unprecedented undertaking from DOJ and SEC. Our goal in preparing the *Guide* was to provide helpful information about the FCPA and our FCPA enforcement efforts to businesses that want to compete fairly in foreign markets, so that those businesses can maximize their ability to comply with the FCPA in the most effective and efficient way suitable to their business and the markets in which they operate. There may no other area of the law where DOJ or SEC has provided the public with as much information about our enforcement approach and priorities.
- The *Guide* provides helpful information for enterprises of all sizes – from small businesses doing their first transactions abroad to multi-national corporations with subsidiaries around the world. It contains basic information, such as who and what is covered by the FCPA’s anti-bribery and accounting provisions, as well as information for more sophisticated readers, including information about successor liability and third-party vetting in the FCPA context.
- The *Guide* takes a multi-faceted approach, setting forth in detail the statutory requirements while also providing insight into DOJ and SEC enforcement practices through hypotheticals; examples of actual enforcement actions and matters DOJ and SEC have declined to pursue; and summaries of applicable case law and DOJ opinion releases.
- For example, the *Guide* contains six detailed hypotheticals addressing questions regarding jurisdiction under the FCPA; the treatment of gifts, travel and entertainment expenses; facilitating payments; successor liability involving acquired companies that were and were not previously subject to the FCPA; and third-party vetting.
- The *Guide* also contains recent, anonymized examples of matters DOJ and SEC declined to pursue, including a discussion of the factors DOJ and SEC considered when choosing to decline these particular matters.
- The *Guide* includes, among other things:
 - An extensive discussion regarding the provision of gifts, travel and entertainment, including a hypothetical addressing the issue. This discussion includes the fact that DOJ and SEC have not focused our enforcement efforts on the payment of reasonable travel and entertainment expenses, instead bringing cases where the

corrupt payment of travel and entertainment expenses occurred in conjunction with other conduct reflecting systemic bribery or other clear indicia of corrupt intent.

- A section addressing the question “Who is a Foreign Official” and what constitutes a department, agency or instrumentality of a foreign government. Among other things, this section notes that, as a practical matter, an entity is unlikely to qualify as an instrumentality of a foreign government if a government does not own or control a majority of its shares. The section also explains the limited circumstances in which DOJ or SEC enforcement actions have involved foreign officials employed by entities in which a foreign government has less than 50 percent ownership. In those actions, there have been clear indicia that the foreign governmental controls the entity at issue.
- A lengthy discussion of successor liability that includes two hypotheticals – one in which the acquired company was not previously subject to the FCPA, one in which it was – as well as practical tips to reduce the risk of FCPA violations in the merger and acquisitions context. The discussion includes the fact that DOJ and SEC only take action against successor companies in limited circumstances, generally in cases involving egregious and sustained violations or where the successor company directly participated in the violations or failed to stop the misconduct from continuing after the acquisition. More often, DOJ and SEC only bring enforcement action, if any, against the predecessor company.
- A section addressing effective corporate compliance programs that discusses the hallmarks of an effective compliance program while making clear that there is no one-size-fits-all program, and that effective compliance programs are usually tailored to a company’s specific business and to the risks associated with that business. The section discusses the common-sense and pragmatic factors that DOJ and SEC consider when evaluating a company’s compliance program.
- The FCPA is critically important for combating corruption around the globe. Corruption has corrosive effects on democratic institutions, undermining public accountability and diverting public resources from important priorities such as health, education, and infrastructure. When business is won or lost based on how much a company is willing to pay in bribes rather than on the quality of its products and services, law-abiding companies are placed at a competitive disadvantage, and consumers lose.