



The Bottom Line

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DEPARTMENT OF JUSTICE ISSUES NEW FCPA RESOURCE GUIDE

Summary

On July 3, 2020, the U.S. Department of Justice (DOJ) Criminal Division and the Securities and Exchange Commission (SEC) released the second edition of A Resource Guide to the U.S. Foreign Corrupt Practices Act (the “FCPA Resource Guide”).

Background

Congress enacted the U.S. Foreign Corrupt Practices Act (FCPA or the Act) in 1977 in response to revelations of widespread bribery of foreign officials by U.S. companies. The Act was intended to halt those corrupt practices, create a level playing field for honest businesses, and restore public confidence in the integrity of the marketplace. In the four decades since Congress enacted the FCPA, the extent of corporate bribery has become clearer. Corruption impedes economic growth by diverting public resources from important priorities, such as health, education, and infrastructure. It undermines democratic values and public accountability and weakens the rule of law.

The first edition of the Guide was released in November 2012, which was the first time the enforcement agencies had published such a compilation of detailed information about the FCPA and the agencies’ enforcement of the statute. The updates to the second edition reflect many developments in FCPA enforcement since the FCPA Resource Guide was first published, including discussion of policy changes and recent court decisions.

Current Status

Originally released in November 2012, and updated in July 2020, the Guide addresses a wide variety of topics, including who and what is covered by the FCPA’s anti-bribery and accounting provisions; the definition of a “foreign official”; the jurisdictional reach of the FCPA; types of proper and improper payments; application of successor liability in the mergers and acquisitions context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. This updated edition includes:

- Guidance on definitions of “foreign official” and “agent”;
- The newest Corporate Enforcement Policy, which formalized the process for obtaining leniency in investigations; ([The Bottom Line: VOL. 18](#))
- Additional details regarding successor liability in mergers and acquisitions; and
- An explanation regarding the principles that guide DOJ and SEC enforcement of the Act.

Impact

The release of this second edition of the FCPA Resource Guide reflects a continuing effort by the DOJ and SEC to provide transparency around the agencies’ enforcement regime. As with the prior version, the revised Resource Guide remains “non-binding, informal, and summary in nature” and is offered to provide information to individuals and businesses seeking to comply with the law.

RESOURCES:

[A Resource Guide to U.S. FCPA, Second Edition \(DOJ\)](#)