

U.S. Attorney General Signals Robust White Collar and FCPA Enforcement Will Continue, Expresses Concern About Multi-Jurisdictional “Piling On”

In remarks (available [here](#)) delivered on April 24 in Washington, D.C., newly-confirmed U.S. Attorney General Jeff Sessions explained that the U.S. Department of Justice (“**DOJ**”) will continue a robust approach to white-collar enforcement, including enforcement of the Foreign Corrupt Practices Act (“**FCPA**”). Speaking at the Ethics and Compliance Initiative Annual Conference, the Attorney General sought to address any uncertainty regarding whether this approach would continue in the new Administration.

Sessions’ remarks signaled that DOJ would continue to hold individuals accountable for wrongdoing, reward companies with strong compliance programs and incentivize corporate cooperation in connection with DOJ investigations. The DOJ’s interest in protecting American businesses and consumers was an overarching theme of the Attorney General’s remarks, raising potential questions for non-U.S. companies about whether they will face even more aggressive enforcement. Consistent with the prior Administration, the Attorney General expressed some concern about the potential for regulatory “piling on” when companies face investigations in multiple jurisdictions. The Attorney General’s remarks should provide increased predictability for companies as DOJ’s white collar priorities will remain largely consistent with the prior Administration. U.S. and foreign companies alike should appreciate that vigorous white-collar enforcement will continue and would be wise to remain focused on effective compliance.

FCPA Enforcement: Commitment to an “Even Playing Field” for Honest Businesses

The Attorney General characterized enforcement of the FCPA as critical to ensuring that law-abiding U.S. and other companies are not placed at a disadvantage when their competitors choose to break the law and engage in corruption. Underscoring DOJ’s goal of an “even playing field” for such companies, the Attorney General explained that bribery harms free competition, increases the cost of doing business and often leads to importing substandard products and services.

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“Companies should succeed because they provide superior products and services, not because they have paid off the right people.” He added that “the United States can’t allow its corporate community to be vulnerable to unfair competition.” The Attorney General emphasized protecting honest businesses and American consumers, indicating a subtle potential shift in the philosophy underpinning enforcement from the prior Administration that framed the fight against corruption as critical to upholding the rule of law. These remarks raise potential questions for non-U.S. companies about whether they will face even more aggressive enforcement, at least where they are not complying with U.S. law.

Holding Individuals Accountable and Rewarding Corporations for Effective Compliance Programs and Cooperation

The Attorney General’s remarks signaled that DOJ would continue to prioritize both individual accountability for wrongdoing, and rewarding and incentivizing companies for strong compliance and cooperation in connection with DOJ investigations. First, consistent with the approach set forth in the policy announcement by former Deputy Attorney General Sally Yates from September 2015 (known as the “**Yates Memo**”), DOJ will continue to hold individuals accountable for corporate misconduct. Following the delivery of his prepared remarks, the Attorney General addressed the issue of individual responsibility during a Q&A session. He reiterated that DOJ remains committed to pursuing individual accountability for corporate misconduct in appropriate cases, and added that shareholders should not have to pay unfairly for corporate misconduct.

Second, the Attorney General reaffirmed that when making charging decisions, DOJ will continue to incentivize and reward companies with effective compliance programs. In doing so, he acknowledged that even companies with high-quality ethics and compliance programs cannot make guarantees against corporate misconduct, adding that companies with strong compliance programs should not be punished unnecessarily for the acts of one employee or division chief.

In encouraging good corporate citizenship, the Attorney General stressed that the collective responsibility “to do the right thing . . . is entrusted to all of us,” and that, at bottom, building a strong culture of ethics and compliance is vital to “mak[ing] your companies and our country better.” In the Q&A session, the Attorney General invited future dialogue and suggestions from compliance and ethics counsel and corporate officers.

In addition to having a strong compliance culture, companies that self-disclose misconduct, cooperate with authorities and take reasonable steps to remediate issues—all significant factors that inform the exercise of prosecutorial discretion—will likely continue to benefit under this Administration. The Attorney General emphasized that these principles have guided federal prosecutors for years, and are reflected in the U.S. Sentencing Guidelines, which similarly provide substantial reductions in penalties for companies that self-disclose and accept responsibility for their misconduct.

Concern Over Regulatory “Piling On” in Multi-Jurisdictional Enforcement Actions

In the face of increasingly global white collar criminal enforcement, the Attorney General expressed concern over laws and procedures that may disadvantage American companies, specifically citing the use of coordinated enforcement actions with multiple enforcement authorities in different jurisdictions. During the Q&A session, he acknowledged the value of collaborating with foreign partners in law enforcement in cross-border investigations, but cautioned that there can be “abuse” in those situations. Recalling a case from his time on the Senate Judiciary Committee in which he believed DOJ had encouraged foreign authorities to “pile on” an American company to achieve a settlement, the Attorney General questioned whether such tactics were indeed the best approach.

Conclusion

As the Attorney General implements his DOJ leadership team, companies should expect DOJ to further refine its enforcement priorities—but any marked policy change in white collar enforcement appears unlikely. U.S. and foreign companies should prepare for continued robust white-collar enforcement, including the potential for further aggressive FCPA enforcement. With this in mind, companies should consider redoubling their efforts to build and maintain effective compliance programs.

If you have any questions, please reach out to the people on the right or your usual Linklaters contact.

Authors: Adam Lurie, Douglas Tween, Matthew Axelrod, Caitlin Potratz, John Akin

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Contacts

For further information, please contact:

Matthew Axelrod
Partner

(+1) 202 654 9264

matthew.axelrod@linklaters.com

Adam Lurie
Partner

(+1) 202 654 9227

adam.lurie@linklaters.com

Douglas Tween
Partner

(+1) 212 903 9072

douglas.tween@linklaters.com

John Akin
Associate

(+1) 202 654 9266

john.akin@linklaters.com

Caitlin Potratz
Associate

(+1) 202 654 9240

caitlin.potratz@linklaters.com

Linklaters LLP
601 Thirteenth Street N.W.
Suite 400 South
Washington, D.C. 20005

Telephone (+1) 202 654 9200
Facsimile (+1) 202 654 9210

Linklaters.com