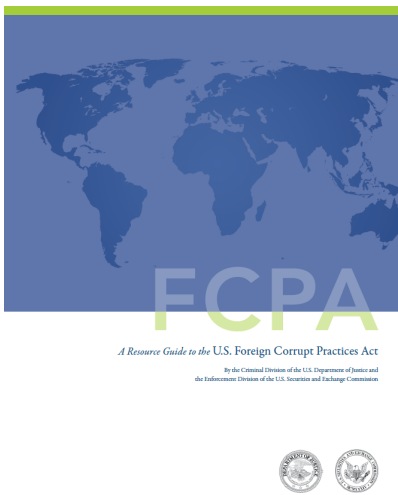




## DOJ AND SEC RELEASE MUCH-ANTICIPATED RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT ("FCPA")



On November 14, 2012, the U.S. Department of Justice ("DOJ") and the Enforcement Division of the U.S. Securities and Exchange Commission ("SEC") released "A Resource Guide to the U.S. Foreign Corrupt Practices Act."<sup>1</sup> The guide represents a concerted effort by the DOJ and the SEC to provide substantial insight into their approach and priorities in enforcing the FCPA. Although the guide does not represent the "law," but instead the DOJ's and SEC's interpretations of the law, the resource guide is likely to become a widely accepted first reference point for any company or individual seeking FCPA guidance.

At 120 pages, the guide is significantly more detailed and comprehensive than its predecessor, the "Lay Person's Guide to the FCPA."<sup>2</sup> Noteworthy features of the guide include 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 due diligence. The guide also contains recent examples of matters the DOJ and SEC declined to pursue, including a

discussion of the factors the DOJ and SEC considered when choosing to decline those particular matters.

For small businesses conducting their first transactions abroad and for those with only a basic knowledge of the FCPA, the new guide offers a valuable resource that compiles multiple sources that were once scattered into one easily accessible summary. For multinational companies with significant international operations and mature anti-corruption programs, however, the guide offers little, if any, new guidance on the many gray areas of FCPA enforcement, and instead points out what are obvious violations and non-violations.

Also of note is the resource guide's section titled, "Hallmarks of Effective Compliance Programs." The guide makes clear that while there is no such thing as a one-size-fits-all program, there are several universal components to an effective compliance program. Specifically, the guide discusses effective compliance programs as those that have: 1) a demonstrated commitment from senior management to FCPA compliance that includes a clearly articulated policy against corruption; 2) a code of conduct that is supported with appropriate policies and procedures; 3) internal support for the compliance function including oversight, autonomy, and adequate resources; 4) robust risk assessment; 5) adequate training and continuing advice to employees; 6) incentives and disciplinary measures; 7) risk-based third party due diligence; 8) effective mechanisms for confidential internal reporting and investigations; and 9) continuous compliance program improvement through periodic testing and review.

<sup>1</sup> <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>

<sup>2</sup> Dep't of Justice & Dep't of Commerce, "Lay Person's Guide" to Foreign Corrupt Practices Act, [www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf](http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf) ("Lay Person's Guide to the FCPA").



Lastly, it is important to realize that the guide is not meant to be the final word on FCPA enforcement; it is not the law, it is not binding, and it does not in any way limit the enforcement intentions or positions of the DOJ or SEC. Enforcement actions and litigation positions may change and appear to vary widely in application to specific factual circumstances.

— [M. Richard Schroeder](#), [Michael W. Magner](#), and [Samuel H. Winston](#)

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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