



## FCPA/ANTI-CORRUPTION UPDATE

### **DOJ Announces Plan To Release New FCPA Guidance**

For the first time in the thirty-four years since the passage of the Foreign Corrupt Practices Act (FCPA or Act), the Department of Justice (DOJ) will release general guidance on the Act's criminal and civil enforcement provisions. Lanny Breuer, Assistant Attorney General for DOJ's Criminal Division made the announcement on Tuesday, November 8, at the National Conference on the Foreign Corrupt Practices Act in Washington D.C.<sup>1</sup> The Guidance will be released in 2012, and Breuer said that he "hope[d] [it] will be a useful and transparent aid" for companies. Breuer gave no further details.

Breuer's reference to the guidance amounted to approximately two sentences in his keynote address in the portion regarding the latest advances the Division has made on elucidating FCPA enforcement. Specifically, Breuer mentioned DOJ's "lay person's guide" to the FCPA, which is a user-friendly consolidation of the information available on the Criminal Division's website. He also discussed DOJ's participation in a Business Roundtable at the U.S. Department of Commerce. The Business Roundtable, held in July 2011, invited dialogue from private sector companies from different industries regarding their thoughts on the FCPA and its enforcement. The Chamber of Commerce, the country's largest business lobbying group, has been asking for FCPA guidance and has pushed for legislative reform so that companies can have clear notice of the conduct that will give rise to FCPA exposure. Indeed, the House of Representatives held a hearing on June 15, 2011 regarding the Chamber of Commerce's proposed amendments to the FCPA. The Chamber of Commerce said on Tuesday that it was "encouraged" by the Justice Department's announcement.

Although Breuer did not provide much additional information as to what the guidance would look like, he rejected the idea of amending the FCPA. Breuer emphasized that this was not the time to weaken the FCPA. "I want to be clear about one thing with respect to these proposals: we have no intention whatsoever of supporting reforms whose aim is to weaken the FCPA and make it a less effective tool for fighting foreign bribery." According to Breuer, "at this crucial moment in history, watering down the Act – by eliminating successor liability in the FCPA context, for example – would send exactly the wrong message." Breuer also recognized efforts by other countries, such as Russia and China, and although he was encouraged by this, he said it will "not cure the problem of corruption in either country." He emphasized that the United States must continue leading the charge against transnational bribery.

This is not the first time DOJ has considered issuing FCPA guidance. The 1988 amendments to the FCPA required the Attorney General to release guidance within one year. By 1990, after a period of public comment and consultation with other agencies, DOJ determined that guidelines were not necessary and guidelines were never released.

<sup>1</sup> <http://www.justice.gov/criminal/pr/speeches/2011/crm-speech-111108.html>

The Assistant Attorney General's address has sparked a lot of interest regarding the upcoming guidance, and international companies should stay tuned. In the meantime, companies and their employees should remain vigilant in detecting and dealing with any potential FCPA issues.

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