



# Financial Fraud Law Report

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# Official Reinforces DOJ's Commitment to Rigorous Enforcement of the FCPA

By IKE ADAMS and BRENDAN C. SMITH\*

*The authors of this article report on a recent speech made at the Global Anti-Corruption Compliance Congress by then acting Assistant Attorney General Mythili Raman, which offered a complete endorsement of the Department of Justice's rigorous enforcement of the Foreign Corrupt Practices Act.*

## INTRODUCTION

In a speech at the Global Anti-Corruption Compliance Congress, then acting Assistant Attorney General Mythili Raman offered a complete endorsement of the Department of Justice's ("DOJ's") rigorous enforcement of the Foreign Corrupt Practices Act ("FCPA"). She set forth DOJ's rationale for its robust prosecution of FCPA cases and clearly indicated DOJ's intent to continue its vigorous prosecution. Characterizing FCPA enforcement not just as a "priority," but as a "baseline imperative," Assistant Attorney General Raman promised that DOJ will continue to employ a "multi-faceted approach" in fighting global corruption.

## THESIS FOR HEIGHTENED ENFORCEMENT OF THE FCPA

Assistant Attorney General Raman began her speech by offering a thesis for DOJ's heightened enforcement of the FCPA. She explained that DOJ's fight against foreign corruption is necessary to protect U.S. domestic interests. According to Assistant Attorney General Raman, corruption inhibits "the ability to compete in a fair and transparent marketplace." She noted that when foreign corruption exists, U.S. companies are no longer "rewarded for their efficiency, innovation and honest business practices," but instead "suffer at the hands of corrupt government and lose out to corrupt competitors."

## NATIONAL SECURITY IMPLICATIONS

Assistant Attorney General Raman's concerns were not limited to foreign corruption's effect on the U.S. economy. She stressed that the Department's fight against foreign corruption is a "necessity" for U.S. national security. She explained that, "[w]hen public officials are more interested in their own

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political wealth than the prosperity of the citizens they are supposed to serve, civilized society falters and opportunities are created for organized criminal and terrorist networks.” Corrupt regimes present “very real dangers . . . for us in the United States” because they are “less likely to cooperate with U.S. law enforcement” and “create safe havens for organized criminals by giving them a secure base from which they can orchestrate massive criminal activity.”

### **SUCCESSFUL FOREIGN BRIBERY PROSECUTIONS**

Assistant Attorney General Raman also recapped DOJ’s successful foreign bribery prosecutions in 2013, noting that “nine corporate resolutions in foreign bribery cases . . . resulted in over \$730 million in criminal penalties and forfeitures.”

### **CASES DECLINED**

Assistant Attorney General Raman, however, also highlighted the cases in 2013 that DOJ did not bring. In particular, she noted that there were instances in which DOJ “declined to prosecute companies that had detected corrupt conduct, voluntarily disclosed it and fully remediated the problem.” According to Assistant Attorney General Raman, these declinations demonstrate that DOJ has been making efforts to “recognize” and “credit” companies for their strong compliance programs. But she warned that, “when companies fail to implement or enforce robust compliance programs,” the Department “will not hesitate” to prosecute. In this regard, she cited a recent example where the defendant “did not have an effective compliance and ethics program, [] did not voluntarily disclose the conduct at issue to the Department, [] failed to properly remediate the conduct, and [] refused to cooperate.”

### **FOUR FEATURES OF THE DOJ’S ANTI-CORRUPTION EFFORTS**

Assistant Attorney General Raman underscored four notable features of DOJ’s recent anti-corruption efforts. First, she pointed to the “upward trend in the prosecution of individuals,” noting that DOJ has brought charges against 18 individuals since the beginning of 2013. Second, she asserted that DOJ is “no longer dependent on [its] ability to look back at misconduct,” but “working in real time to find and stop ongoing corrupt activity.” Assistant Attorney General Raman cited the recent prosecution of a French citizen, Fredric Cilins, in which DOJ used an undercover agent and a wiretap during the investigation. She said this case should send a message to “those who are committing acts of foreign bribery right now . . . that the middleman they are engaging could be an undercover agent, that the

telephone calls they are making may be recorded pursuant to a court order, and that the public official they are bribing may be cooperating with U.S. law enforcement.” Third, Assistant Attorney General Raman noted that DOJ is starting to use a “wide range of federal criminal statutes” outside of the FCPA to prosecute those committing foreign corruption, such as “wire fraud, Travel Act violations, money laundering and obstruction of justice.” Fourth, she emphasized that DOJ is “not only prosecuting bribe givers, [it is] prosecuting the bribe takers as well.” As an example, she described the prosecution of a senior official of Venezuela’s state-owned economic development bank who accepted over \$5 million in bribes from a U.S. broker-dealer. Assistant Attorney General Raman concluded that this “comprehensive approach . . . ensures that all who are involved in criminal conduct are held to account, whether the FCPA covers them or not.” These four developments suggest that the Department is not only enhancing its anti-corruption program efforts, but also expanding the scope of those who can be prosecuted for foreign corruption.

#### **KLEPTOCRACY ASSET RECOVERY INITIATIVE**

Finally, Assistant Attorney General Raman highlighted that DOJ is making a concerted effort to “use civil authorities to strip corrupt officials of the proceeds of their conduct.” In particular, she explained that the establishment of the Kleptocracy Asset Recovery Initiative in 2010 has enabled DOJ “to recover corruptly obtained monies that are hidden across the globe.” Assistant Attorney General Raman promised that DOJ “is equipped and determined to confiscate the ill-gotten riches of corrupt leaders who drain the resources of their countries.”

#### **CONCLUSION**

The Assistant Attorney General’s speech left little doubt that the fight against international corruption will continue to be a top priority for DOJ in the coming years. To this end, Assistant Attorney General Raman promised that the Department will deploy the “latest investigative techniques,” utilize a “full range of statutes” in addition to the FCPA itself, and devote considerable resources to this fight. In light of the Assistant Attorney General’s comments, companies should ensure that their compliance programs remain state-of-the-art, they provide robust anti-corruption training (broader than just the FCPA) to employees, and they vigilantly adhere to proper business practices in foreign markets.