

REVISIONS TO THE FCPA RESOURCE GUIDE

The Foreign Corrupt Practices Act of the United States (FCPA) includes a tough set of rules prohibiting foreign bribery. It envisages strict corporate liability for act or omission of their employees, agents or –in some cases- other associated entities. The companies falling under the jurisdiction of the FCPA are required to adopt rigorous and robust compliance policies, and in case of any failure to do, they may face significant penalties owing to wide extraterritorial reach of this Act.

The FCPA Resource Guide (the Guide) - first promulgated in 2012- gives crucial succour to understanding the content and enforcement of the FCPA. The US Department of Justice (DoJ) recently made some amendments to the Guide. Considering that the FCPA has received significant criticism especially in regard to its application to instances of bribery committed by foreigners residing outside the United States since it entered into force, the changes in the Guide raised the expectation whether the DoJ offered something new about the substance and enforcement of the Act. A quick glance at the revision however revealed that the Guide has not been altered substantially.

The Guide has been revised mainly in two respects. The first one concerns the Section on the Accounting Provisions for Issuers, Subsidiaries, and Affiliates. According to the 2015 Guide,

- 1- In referencing an issuer's responsibility for the books and records of its affiliates, the Guide quietly dropped the responsibility for "joint venture partners" from its list. The Guide now limits the requirement to "joint ventures" under an issuer's control.
- 2- The Guide previously defined a "minority-owned subsidiary or affiliate" as a company where the parent owns "less than 50%." That line now reads "50% or less of a subsidiary or affiliate."
- 3- The Guide changed its standard for appropriate oversight over minority-owned subsidiaries from "best efforts" to "good faith efforts."

The other change introduced by the 2015 version regards the criminal penalties. Compared to the prior version, the 2015 Guide introduces that:

- 1- Individuals are subject to a maximum fine of \$250,000, an increase from the maximum of \$100,000 discussed in the prior version.
- 2- When calculating pecuniary gain under the Alternative Fines Act, a fine of up to twice “the benefit that the defendant *obtained*” may be imposed.

While the revision may not be seen as a novelty, they show nonetheless that the administrative bodies in charge of enforcing the FCPA –depending on the complaints and practices in practice- may find it necessary to make amendments in the future. But this does not change the fact that the FCPA has, and will continue to have- significant ramification for and impact on the business world operating globally.

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