

CLIENT ALERT

DOJ and SEC Issue Long-Awaited FCPA Guidance

November 14, 2012

The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) today issued long-awaited written guidance on the U.S. Foreign Corrupt Practices Act (FCPA), in a 120-page publication entitled *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. According to the government, the *Guide* aims to "provide helpful information to enterprises of all shapes and sizes – from small businesses doing their first transactions abroad to multi-national corporations with subsidiaries around the world."

The *Guide* covers numerous topics, including several that are at the forefront of compliance officers' minds and central to current litigation, enforcement actions, and negotiations. Topics the *Guide* addresses include:

- Who and what are covered by the FCPA's bribery and accounting provisions
- What are proper and improper gifts, travel, and entertainment expenses
- The definition of "foreign official"
- The scope of the facilitating payments exception
- The affirmative defenses, such as reimbursement of reasonable travel expenses
- How successor liability applies in the M&A context
- The hallmarks of effective corporate compliance programs
- Penalties, sanctions, and remedies
- Available types of criminal and civil resolution

The *Guide* reflects not only the government's interpretation of the law, but also its enforcement practices, providing hypotheticals and examples of enforcement actions and declinations. The *Guide* also includes discussion of the impact of self-reporting, cooperation, corporate compliance programs and remedial efforts.

Understanding the *Guide*, which may be found [here](#), will be essential to any company that could fall within the broad reach of the FCPA. To that end, we will issue a full analysis within the next few days.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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