

## US DEPARTMENT OF JUSTICE TO ISSUE FCPA GUIDANCE IN 2012

**November 10, 2011**

On Tuesday, the Department of Justice announced that it will offer "detailed new guidance on the [US FCPA's] criminal and civil enforcement provisions" in 2012. In the same conference keynote address, Assistant Attorney General for the Criminal Division Lanny Breuer spoke about a number of additional aspects of the US approach to anti-corruption issues, including recent enforcement initiatives, efforts at multilateral collaboration and DOJ actions to seize the proceeds of foreign officials engaged in corruption. The full text of Breuer's remarks may be found [here](#).

The concept of DOJ-issued guidance is not a new one. Indeed, as part of FCPA amendments in 1988, the DOJ was required to consider whether guidance would be helpful. After a public notice and comment process, the DOJ in 1990 declined to issue guidance. See [here](#) for a 2010 blog posting on this issue. The idea gained renewed traction in the US following passage of the UK Bribery Act, which includes a provision requiring the UK Ministry of Justice to issue guidance on compliance procedures, and during recent debate about potential amendments to the FCPA.

At the moment, there is no further word on what exactly the DOJ's "detailed new guidance" will address, nor is there word on whether the process of developing the guidance will be subject to public commentary. For in-house counsel, it would be most helpful to have the DOJ's specific views on the following subjects: (1) the scope of the affirmative defense for promotional expenses, such as meals, token gifts, business entertainment and travel; (2) when employees of state-owned, state-controlled or state-involved enterprises qualify as "foreign officials;" (3) the territorial contacts sufficient to trigger US jurisdiction over "persons other than issuers or domestic concerns;" and, (4) whether and when the statute's expressly-listed examples of "facilitating and expediting payments" qualify for the exception.

There is certain to be extensive discussion about the guidance, and we will keep you posted on progress as it unfolds.

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If you have any questions about this FCPA Update, please contact [Jamie Parkinson](#).

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