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A Washington view of global anti-corruption

by Mark Grider

Mark Grider (mark.grider@huschblackwell.com) is a Partner with Husch Blackwell in Washington DC.

The U.S. Foreign Corrupt Practices Act (FCPA) turned 40 last year under a new administration and an increasingly global business landscape. With the changing political and business tides, understanding the FCPA's impact on your business is crucial. In a recent speech by Deputy Attorney General Rod Rosenstein, he emphasized this importance, saying, "[i]nvestigations of corporate fraud and corruption are essential to the rule of law."^[1] Of course, in the extensive global landscape in which we find ourselves in 2018, the United States is not the only country fighting against corporate fraud and corruption. For example, the UK Bribery Act (UKBA) also seeks to combat corruption and does so in an even broader manner than the FCPA.

With these regulations in mind, and as we've discussed in an earlier article on corporate compliance,^[2] having the knowledge and tools in place to create a culture of compliance and lawfully and strategically navigate your company through the regulatory hurdles is essential for today's globally positioned business. Whether it's businesses specializing in technology, manufacturing, or government contracting, creating a tone from the top, embracing key corporate values, having a robust compliance program, and extending those practices to any third-party intermediaries that do business on your company's behalf are important steps a global company can take in order to ensure compliance.

Anti-corruption compliance under the new administration

Early on in the Trump administration, the Department of Justice (DOJ) Fraud Section released its new "Evaluation of Corporate Compliance Programs," the first formal document issued by the DOJ focused on corporate compliance.^[3] Without necessarily introducing new standards, the evaluation created a helpful checklist for structuring a corporate compliance program. During his speech, Rosenstein suggested that DOJ would abandon its practice of changing policy via memo, noting that "[m]anagement-by-memo is an inefficient and often ineffective method of enforcing government policies." Rather, the Deputy Attorney General indicated that current policies would be reviewed for potential inclusion in the *United States Attorneys' Manual* as official doctrine. Rosenstein further indicated that some of the previous administrations' FCPA policies, including the Yates Memo and the Foreign Corrupt Practices Act Pilot Program, would be included in that review.

In addition to Rosenstein's statements, DOJ's Principal Deputy Assistant Attorney General at the time, David Bitkower, indicated a continued importance of companies possessing an effective compliance program: "The Department has long placed emphasis when reaching corporate resolutions on the existence or lack of an effective corporate compliance program."

It is also worth noting that on November 2, 2017, the Securities and Exchange Commission (SEC) named Charles Cain the new Chief of the Enforcement Division's FCPA Unit. Cain had served as Acting Chief of the FCPA Unit since April 2017, replacing Kara Brockmeyer, who left the SEC last year. In a press release from the SEC announcing Cain as the new chief, Cain says of his new role, "I look forward to building upon the important work the unit has done to combat corruption and level the playing field globally."^[4]

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