

## JUSTICE NEWS

### **Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act**

Oxon Hill, MD ~ Wednesday, November 29, 2017

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#### *Remarks as prepared for delivery*

Good morning and thank you, Sandra for that thoughtful and brief introduction.

It is a pleasure for me to be here with so many compliance officers, lawyers, auditors, and corporate executives for ACI's 34th annual conference on the Foreign Corrupt Practices Act.

I must admit that I was amused by a marketing blurb for this event. It promised that the audience would hear from "anti-corruption" leaders and other "highly respected" experts.

Then, it noted that you also would hear from government officials. I hope those categories are not mutually exclusive!

As a matter of fact, the experts you will hear from include some of the federal government's leading fraud prosecutors and investigators. I am proud to work with them.

This year, we mark four decades since Congress enacted the FCPA. It was the first effort by any country in the world to make it a crime to pay bribes to foreign officials.

There was a time in the 1960s and '70s when paying bribes was viewed as a necessary part of doing business abroad. Some American companies were unapologetic about making corrupt payments.

Corruption was rife in many parts of the world. There were European countries that allowed companies to deduct bribes on their corporate tax returns, as business expenses.

In 1976, the U.S. Senate Banking Committee revealed that hundreds of U.S. companies had made corrupt foreign payments. The payments totaled hundreds of millions of dollars.

The Committee concluded that there was a need for anti-bribery legislation. Its report reasoned that "[c]orporate bribery is bad business" and "fundamentally destructive" in a free market society.

Paying bribes may still be common in some places. But that does not make it right. As Thomas Jefferson famously said: "On matters of style, swim with the current. On matters of principle, stand like a rock."

Some people refer to me as a career prosecutor, but I studied management, marketing, and finance at an undergraduate business school. I expected to put those skills to use in corporate America. Law enforcement took me in a different direction, but understanding the business world remains valuable to my work.

One of the lessons I learned in business school is that ethical conduct is a good investment. Companies sometimes gain a short-term advantage over competitors by cutting corners, but in the long run, companies with a culture of integrity usually prevail in the marketplace.

Good people want to work for honest businesses. Investors trust them. Customers like to do business with them.

I visited the nation of Armenia in 1994, just as it was emerging from seven decades of Soviet domination. I gave a talk about public corruption at the University of Yerevan, the oldest university in the country. After I finished, a student raised his hand with a question. He asked me, "If you cannot pay bribes in America, how do you get electricity?"

It was a pragmatic question that illustrated how that young man had learned to think about his society. Corruption may start small, but it has a tendency to spread like an infection. It stifles innovation, fuels inefficiency, and inculcates distrust of government.

I offer those thoughts in the spirit of the open dialogue of this conference. But it is not for the Department of Justice to say whether the FCPA reflects sound policymaking. The United States Congress made that judgment. Our mission is to detect, deter, and punish violations of the laws of the United States.

The Attorney General and I have been faithful to that principle. We plan to continue to emphasize it as an essential step in promoting respect for the rule of law.

The FCPA is the law of the land. We will enforce it against both foreign and domestic companies that avail themselves of the privileges of the American marketplace.

The United States plays a central role in the worldwide fight against corruption, and we serve as a role model. Following our lead, many other countries have joined America by implementing their own anti-corruption laws. Those laws do not just encourage good business. They promote good government.

The Organization for Economic Co-operation and Development adopted an Anti-Bribery Convention in 1997. That convention fuels the growing international rejection of corruption.

Forty-three nations participate in the OECD Anti-Bribery Convention. The agreement establishes legally binding standards. Member countries are required to adopt laws that criminalize bribery of foreign public officials in international business transactions. Just a few months ago, a new country, Costa Rica, ratified the convention.

These forty-three nations recognize the importance of a level playing field that protects citizens and honest businesses.

Earlier this year, Attorney General Sessions spoke about the harmful consequences of corruption. It leads to increased prices, substandard products and services, and reduced investment.

It is no coincidence that crime syndicates and authoritarian rulers use corruption to enrich themselves. They engage in corruption to consolidate political power and defeat legitimate political adversaries.

Working together with international partners, we are making headway in combatting corruption. Federal prosecutors in our Criminal Division's Fraud Section, together with Assistant U.S. Attorneys and law enforcement partners, continue to secure convictions in important FCPA-related cases.

Recently, the FCPA Unit worked with the U.S. Attorney's Office for the Southern District of New York to obtain a trial conviction against a former Guinean Minister of Mines, for laundering proceeds from \$8 million in bribes.

The FCPA Unit and the U.S. Attorney's Office for the Southern District of New York secured another trial victory against a Chinese billionaire for bribing United Nations officials.

In a third case, FCPA prosecutors worked with Assistant U.S. Attorneys in the Central District of California, and prevailed at trial against a South Korean earthquake research center director who laundered the bribery proceeds in the United States.

In total, 19 individuals have pleaded guilty or been convicted in FCPA-related cases so far this year.

The Department of Justice announced another significant case earlier this month. Two former executives of Rolls-Royce and its subsidiaries, along with a former employee and a consultant, all pleaded guilty to conspiracy in connection with a scheme to bribe foreign officials.

That results reflects tremendous work by the FCPA Unit, Assistant U.S. Attorneys for the Southern District of Ohio, U.S. Postal Inspectors, and the FBI, as well as cooperation with law enforcement authorities in the United Kingdom, Brazil, Austria, Germany, the Netherlands, Singapore, and Turkey. We look forward to continuing to work with our international partners.

Those cases and others like them reinforce the Department's commitment to hold individuals accountable for criminal activity.

Effective deterrence of corporate corruption requires prosecution of culpable individuals. We should not just announce large corporate fines and celebrate penalizing shareholders.

Most American companies are serious about engaging in lawful business practices. Those companies want to do the right thing. They need our support to protect them from criminals who seek unfair advantages.

Law enforcement agencies prosecute criminal wrongdoing only after it occurs. Those prosecutions achieve deterrence indirectly. But a company with a robust compliance program can prevent corruption and reduce the need for enforcement.

That frees agents and prosecutors to focus on people who are committing other financial crimes. It also allows them to focus on different threats to the American people, including terrorism, gang violence, drug trafficking, child exploitation, and human smuggling. People who commit those horrendous crimes do not make voluntary disclosures.

Threats to American safety and security will grow more complex over time. We need corporate America to help us detect and fight those threats.

As Attorney General Jeff Sessions explained, "Societies where the rule of law is treasured ... tend to flourish and succeed. Societies where the rule of law is subject to political whims and personal biases tend to become ... afflicted by corruption, poverty, and human suffering."

The most fundamental mission of the Department of Justice is to protect the American people by enforcing the rule of law.

The rule of law is good for business. It allows businesses to compete for work, enter contracts, make investments, and project revenue with some assurance about the future. It establishes a mechanism to resolve disputes, and it provides a degree of protection from arbitrary government action.

Corporate America should regard law enforcement as an ally. We support the rule of law, which establishes and safeguards a vibrant economic marketplace for your products and services.

The government should provide incentives for companies to engage in ethical corporate behavior. That means fully cooperating with government investigations, and doing what is necessary to remediate misconduct – including implementing a robust compliance program. Good corporate behavior also means notifying law enforcement about wrongdoing.

The incentive system set forth in the Department's FCPA Pilot Program motivates and rewards companies that want to do the right thing and voluntarily disclose misconduct.

In the first year of the Pilot Program, the FCPA Unit received 22 voluntary disclosures, compared to 13 during the previous year. In total, during the year and a half that the Pilot Program was in effect, the FCPA Unit received 30 voluntary disclosures, compared to 18 during the previous 18-month period.

We analyzed the Pilot Program and concluded that it proved to be a step forward in fighting corporate crime. We also determined that there were opportunities for improvement.

So today, I am announcing a revised FCPA Corporate Enforcement Policy.

The new policy enables the Department to efficiently identify and punish criminal conduct, and it provides guidance and greater certainty for companies struggling with the question of whether to make voluntary disclosures of wrongdoing.

Before I speak about the substance of the policy, let me digress for a moment to make a process point.

I know that previous corporate fraud policies often were identified by the name of the Deputy Attorney General who wrote the memo. It is nice to be remembered. But one of my goals is not to be remembered for writing a memo.

After spending nearly three decades trying to keep track of prolix memos, I want the Department to issue concise policy statements. Historical background and commentary should go in a cover memo or a press release. In most instances, the substance of a policy should be in the United States Attorneys' Manual, and it should be readily understood and easily applied by busy prosecutors.

So, the FCPA Corporate Enforcement Policy I am announcing today will be incorporated into the United States Attorneys' Manual.

We expect the new policy to reassure corporations that want to do the right thing. It will increase the volume of voluntary disclosures, and enhance our ability to identify and punish culpable individuals.

The new policy, like the rest of the Department's internal operating policies, creates no private rights and is not enforceable in court. But it does promote consistency by attorneys throughout the Department.

Establishing internal policies helps guide our exercise of discretion and combat the perception that prosecutors act in an arbitrary manner.

The new policy does not provide a guarantee. We cannot eliminate all uncertainty. Preserving a measure of prosecutorial discretion is central to ensuring the exercise of justice.

But with this new policy, we strike the balance in favor of greater clarity about our decision-making process.

The advantage of the policy for businesses is to provide transparency about the benefits available if they satisfy the requirements. We want corporate officers and board members to better understand the costs and benefits of cooperation. The policy therefore specifies what we mean by voluntary disclosure, full cooperation, and timely and appropriate remediation.

Even if a company does not make a voluntary disclosure, benefits are still available for cooperation and remediation. Those steps assist the Department in running an efficient investigation that identifies culpable individuals. They also reduce the likelihood that crimes will be committed again.

I want to highlight a few of the policy's enhancements.

First, the FCPA Corporate Enforcement Policy states that when a company satisfies the standards of voluntary self-disclosure, full cooperation, and timely and appropriate remediation, there will be a presumption that the Department will resolve the company's case through a declination. That presumption may be overcome only if there are aggravating circumstances related to the nature and seriousness of the offense, or if the offender is a criminal recidivist.

It makes sense to treat corporations differently than individuals, because corporate liability is vicarious; it is only derivative of individual liability.

Second, if a company voluntarily discloses wrongdoing and satisfies all other requirements, but aggravating circumstances compel an enforcement action, the Department will recommend a 50% reduction off the low end of the Sentencing Guidelines fine range. Here again, criminal recidivists may not be eligible for such credit. We want to provide an incentive for good conduct. And scrutiny of repeat visitors.

Third, the Policy provides details about how the Department evaluates an appropriate compliance program, which will vary depending on the size and resources of a business.

The Policy therefore specifies some of the hallmarks of an effective compliance and ethics program. Examples include fostering a culture of compliance; dedicating sufficient resources to compliance activities; and ensuring that experienced compliance personnel have appropriate access to management and to the board.

We expect that these adjustments, along with adding the FCPA Corporate Enforcement Policy to the U.S. Attorneys' Manual, will incentivize responsible corporate behavior and reduce cynicism about enforcement.

Of course, companies are free to choose not to comply with the FCPA Corporate Enforcement Policy. A company needs to adhere to the policy only if it wants the Department's prosecutors to follow the policy's guidelines.

Companies that violate the FCPA are always free to choose a different path. In those instances, if crimes come to our attention through whistleblowers or other means, the Department will take appropriate action consistent with the facts, the law, and the Principles of Federal Prosecution of Business Organizations.

Since 2016, the Fraud Section's FCPA Unit has secured criminal resolutions in 17 FCPA-related corporate cases, resulting in penalties and forfeiture to the Department in excess of \$1.6 billion. Of those 17 corporate criminal resolutions, only two were voluntary disclosures under the Pilot Program.

Significantly, each of the two voluntary disclosure cases was resolved through a non-prosecution agreement, and in neither case did we impose a compliance monitor.

Of the 15 corporate resolutions that were not voluntary disclosures, all but three were resolved through guilty pleas, deferred prosecution agreements, or some combination of the two. In ten of those cases, the company was required to engage an independent compliance monitor.

Over that same time period, seven additional matters that came to our attention through voluntary disclosures were resolved under the Pilot Program through declinations with the payment of disgorgement. Clearly, this is not immunity.

Allow me to conclude with the observation that corrupt government officials and criminals who bribe them learn from the cases we bring and the investigative techniques we use.

Criminals try to evade law enforcement. But they also need to evade internal controls and compliance programs, if those internal controls and programs exist. Honest companies pose a meaningful deterrent to corruption.

Companies can protect themselves by exercising caution in choosing their business associates and by ensuring appropriate oversight of their activities.

There is an ancient proverb that counsels, "If you want to know a person's character, consider his friends."

My advice is to make sure that you can stand proudly with the company you keep.

Thank you very much.

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**Speaker:**

Deputy Attorney General Rod J. Rosenstein

**Component(s):**

Office of the Deputy Attorney General

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