

November 27, 2012 www.mcvpr.com**CORPORATE ALERT*****New Guide on U.S. Foreign Corrupt Practices Act Released***

On November 14, 2012, the U.S. Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) released the “Resource Guide to the U.S. Foreign Corrupt Practices Act” (the “Guide”). The Guide does not establish any new rules, but it is a useful resource for companies subject to the FCPA.

The FCPA addresses the problem of international corruption in two ways: (1) the anti-bribery provisions, which prohibit individuals and businesses from bribing foreign government officials in order to obtain or retain business and (2) the accounting provisions, which impose certain record keeping and internal control requirements, and prohibit individuals and companies from knowingly falsifying books and records or circumventing or failing to implement a system of internal controls. Violations of the FCPA can lead to civil and criminal penalties, sanctions, and remedies, including fines, disgorgement, and/or imprisonment.

Among the topics addressed in the Guide are:

- The scope of the FCPA: The Guide describes the subjects and activities under the scope of the FCPA.
- Gifts, Travel and Entertainment: There is guidance as to what is acceptable and what is not.
- Who is a Foreign Official?: The FCPA’s provisions apply to corrupt payments made to (1) any foreign official; (2) any foreign political party or official thereof; (3) any candidate for foreign political office; or (4) any person, while knowing that all or a portion of the payment will be offered, given, or promised to an individual falling within one of the other three categories.
- How are payments to Third Parties treated?: The FCPA expressly prohibits corrupt payments made through third parties or intermediaries. The Guide describes DOJ’s and SEC’s views of liability for third-party payments and the required due diligence.
- Mergers and Acquisitions: A company that does not perform adequate FCPA due diligence prior to a merger or acquisition may face both legal and business risks. The Guide include practical tips on conducting due diligence to mitigate such risks.

- Corporate Compliance Program: An effective compliance program is a critical component of a company's internal controls and is essential to detecting and preventing FCPA violations. The Guide provides a discussion of the DOJ's and SEC's views on corporate compliance programs, including the factors that the DOJ and SEC consider to be the "hallmarks of effective compliance programs."
- What is considered by the DOJ and SEC to decide whether to Open an Investigation or Bring Charges?: The Guide discusses factors that affect whether a matter is resolved by criminal or civil charges, a "Deferred Prosecution Agreement," a "Non-Prosecution Agreement," or a declination.

The Guide may be found at www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf.

If you would like to update your company's FCPA policy, conduct an audit or if you have any questions or comments, or wish additional information regarding these matters, please contact any of the following attorneys:

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