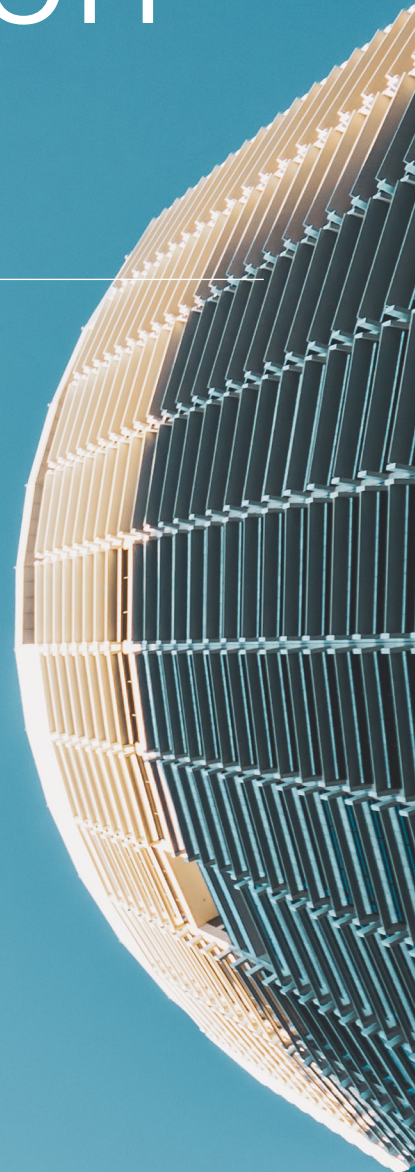

CHAMBERS GLOBAL PRACTICE GUIDES

Anti-Corruption 2026

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USA: Law and Practice

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Law and Practice

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Freshfields US LLP has a white-collar defence team that is highly skilled in advising cross-border businesses on anti-bribery and corruption risks arising anywhere in the world. The firm's US white-collar partners, most of whom are former federal prosecutors, lead a team with more than 200 US lawyers working in close co-ordination with Freshfields' offices in Europe, the Middle East and Asia. Freshfields helps clients respond to simultaneous inquiries from the US DOJ, the US SEC and CFTC, the UK Serious Fraud Office, and other global regulators and

prosecutors, in connection with allegations of bribery and corruption. Freshfields' lawyers develop multi-pronged defence strategies to navigate the varied expectations of regulators and prosecutors around the globe. The firm regularly conducts international anti-bribery compliance programme reviews and provides due diligence and transactional advice for some of the world's leading investors, banks and multi-nationals. Recent anti-corruption work has included securing the first declination with disgorgement under the DOJ's Corporate Enforcement Policy.

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FRESHFIELDS

1. Legal Framework

1.1 International Conventions

The United States has ratified the OECD Convention on Combating Bribery of Foreign Public Officials and the UN Convention Against Corruption. It has signed, but not ratified, the Council of Europe Criminal Law Convention on Corruption.

1.2 National Legislation

The Foreign Corrupt Practices Act (FCPA) is the main federal legislation relating to foreign bribery. A variety of domestic statutes (see **2. Bribery and Corruption Elements**) govern domestic bribery and other corruption involving state or federal government officials and employees. Most of the relevant federal statutes are found in Title 18 of the US Code. Each state has its own criminal laws prohibiting bribery or corruption-related offences. Some local or municipal governments may have anti-corruption or ethics regulations.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

The most important federal anti-corruption agencies actively issue and revise public guidance documents, which are important resources but are not legally binding.

The two most relevant sources of guidance are detailed below. In addition, new enforcement approaches may be announced on an ad hoc basis through memoranda, public statements by agency officials, or other publications.

The Justice Manual

This document sets out DOJ policy and practice regarding how to charge and prosecute violations of most federal criminal statutes. The Justice Manual is a useful reference for understanding the DOJ's interpretation of the law and the factors it considers when making decisions regarding, for example, whether to file charges, what penalties to seek, and how to treat co-operating witnesses and defendants.

The Justice Manual includes a section on the DOJ's Principles of Federal Prosecution of Business Organizations, which lays out the agency's approach to investigating and prosecuting corporations. The Prin-

ciples feature important information about how prosecutors approach businesses that co-operate with federal investigations.

The FCPA Resource Guide

A joint publication by the US DOJ and the Securities and Exchange Commission (SEC), this document provides an overview of the FCPA and the agencies' approaches to key questions about the FCPA's scope and application (eg, successor liability, parent-sub-sidiary relationships, and individual liability).

In 2020, the DOJ issued the first significant revision of the FCPA Resource Guide since it was first published in 2012. Some of the key updates include the FCPA's extraterritorial application, the factors US courts may consider in determining whether or not a non-US person is a "foreign official" for the purposes of the FCPA, and the importance of effective compliance programmes (eg, pre-M&A due diligence).

1.4 Recent Key Amendments to National Legislation

There have not been significant legislative amendments to the key federal corruption statutes in 2025.

2. Bribery and Corruption Elements

2.1 Bribery

The list below identifies the federal criminal statutes that are frequently used to prosecute bribery and corruption. Individual states may have similar statutes.

Bribery – Generally

The FCPA is codified in 15 US Code (USC), Section 78dd-1 et seq. The statute prohibits "corruptly" giving "anything of value" to "foreign official[s]" or political party members for the purpose of:

- influencing the foreign official's acts or decisions;
- inducing the foreign official to act contrary to their lawful duty;
- securing "any improper advantage"; or
- inducing the foreign official to influence a foreign government "in order to assist... in obtaining or retaining business for or with, or directing business to, any person".

The general prohibition on bribing US officials is codified in 18 USC, Section 201 (b). This statute prohibits “corruptly” giving or receiving (or offering, demanding, etc) anything of value in return for an official act or omission by a public official. This law also prohibits exchanging things of value for an act of fraud by the public official (or for the public official’s assistance in a fraud).

The “gratuities” law, codified in 18 USC, Section 201 (c), prohibits giving “anything of value” to a current, former, or future public official “because of any official act” (unless such an act is provided for by law). This statute is broader than the “bribes” law in 18 USC, Section 201 (b), because it does not require “corrupt” intent or an explicit quid pro quo.

18 USC, Sections 207–08, the federal criminal conflict of interest statutes, restrict the conduct of federal officers and employees during and after their federal service. In general, federal officials must not engage in official acts that could affect their personal financial interests (or those of their family members, their future employers, or certain affiliated organisations). These offences are “strict liability” (ie, the prosecution only has to prove the actus reus – the act itself – not the mens rea – the intent), although wilful violations expose an official to more severe penalties.

18 USC, Sections 641, 654, and 666 broadly prohibit theft, wrongful conversion, embezzlement, or bribery involving federal property or programmes funded by federal money. Generally speaking, the acts must be committed “knowingly” or with a “corrupt intent” for criminal liability to apply.

Federal fraud statutes, especially the mail and wire fraud statutes in 18 USC, Sections 1341 and 1343, are frequently used in corruption prosecutions. 18 USC, Section 1346 authorises prosecutors to file charges under these statutes based on an “honest services” theory – ie, that a corrupt official deprived the government of its intangible right to his or her uncompromised judgment, discretion, etc (ie, their “honest services”). These charges require a specific intent to deprive the government of honest services, property, etc.

Other federal statutes are often also used to charge conduct related to a bribery scheme, although they are not specifically related to corruption. For example, prosecutors may charge corrupt officials (or their co-conspirators) with:

- extortion (18 USC, Section 1951) for obtaining property (eg, a bribe) “under colour of official right”;
- travelling in interstate or foreign commerce (or sending interstate emails, making interstate phone calls, etc) to “promote” or “carry on” unlawful activity, including violations of state bribery laws (18 USC, Section 1952, also called the “Travel Act”); or
- money laundering (18 USC, Sections 1956–57) for monetary transactions involving the bribe funds or the proceeds of a bribery scheme – conspiring to violate any of these statutes, or aiding and abetting violations, may be separately charged under 18 USC, Sections 2, 371, and/or 1961–68.

A bribe may be “anything of value” under the FCPA and domestic statutes. “Things of value” may also include cash payments, benefits in kind, lavish gifts, excessive hospitality, charitable donations, contracts, or employment relationships.

The receipt of a bribe is an offence for domestic bribery under 18 USC, Section 201, but not under the FCPA. However, as detailed below, the US government recently passed the Foreign Extortion Prevention Act (FEPA), which makes it a crime for foreign officials to solicit or accept bribes. The US government has also employed other laws (such as money-laundering statutes) to prosecute foreign officials who receive bribes.

Merely proposing or accepting an improper advantage may constitute an offence. Generally, US anti-corruption statutes do not require that the desired results occur, as long as the perpetrator acted with the requisite intent. Indeed, US authorities often criminally prosecute defendants under broad conspiracy statutes in situations where it would be impossible for the expected results to occur – for example, by using undercover law-enforcement agents who are only pretending to be public officials or connected to public officials.

Hospitality, Travel, Gifts and Promotions

Under domestic bribery laws, federal and state officials, including elected political figures and career employees, are generally restricted in the gifts and hospitality they may receive from sources outside the government. Some officials, such as members of Congress, may be required to disclose the gifts they receive to the public. For federal employees, gifts over USD20 are generally prohibited (and they generally may not accept more than USD50 in a year from a single non-government source). Travel expenses are a separate, complicated area of law and also require an analysis of internal government ethics rules. Whether or not a government employee's travel may be funded by a non-government source often depends on the purpose of the trip and the specific rules of the agency where they work.

The FCPA does not limit foreign officials' ability to accept gifts, hospitality, etc, but such expenses can be "things of value" that can give rise to FCPA liability.

Gratuities

The FCPA permits persons subject to its jurisdiction to make "facilitating or expediting payment[s]... the purpose of which is to expedite or to secure the performance of a routine governmental action" by a foreign official. In practice, this exemption is read very narrowly.

The domestic bribery statute does not have an equivalent provision. It is a separate crime to pay a "gratuity", which is a facilitation payment made on account of an official act but not with an intent to influence it. Courts have held that if an official demands payment to perform a routine duty, a defendant may raise an economic coercion defence to the bribery charge.

Failing to prevent bribery is not a specific offence under US law (and US law generally does not criminalise failures to prevent a crime).

Extortion

The Foreign Extortion Prevention Act (FEPA), adopted in December 2023 and codified in 18 USC, Section 201, addresses the demand-side of bribery by making it a crime for foreign officials to solicit or accept bribes from a US citizen, company or issuer, or any-

one located within the territory of the United States, when made to obtain or retain business. Compared to the FCPA, the FEPA slightly expands the definition of "foreign official" to include "any senior political figure", and it also specifies that the law applies to any "foreign official or person selected to be a foreign official".

Foreign Officials

The FCPA defines the term "foreign official" as "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organisation".

The FCPA Resource Guide advises that state-owned or state-controlled companies may be "instrumentalities", so that their employees could be considered "foreign officials". Many factors are relevant in determining whether such a company is an "instrumentality", including "the foreign state's extent of ownership of the entity; the foreign state's degree of control over the entity (including whether key officers and directors of the entity are, or are appointed by, government officials); the foreign state's characterisation of the entity and its employees; the purpose of the entity's activities; the entity's obligations and privileges under the foreign state's law and the general perception that the entity is performing official or governmental functions".

In practice, criminal and civil FCPA charges often involve payments or gifts to employees at state-owned or state-controlled enterprises.

Domestic Statutes

18 USC, Section 201 defines a "public official" as a "Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror". State statutes feature similar definitions.

The bribery of foreign public officials is also criminalised. The FCPA prohibits corrupt payments to foreign public officials for the purpose of obtaining or retaining business opportunities. Likewise, foreign bribery may be prosecuted under the Travel Act.

Commercial bribery is primarily regulated by state rather than federal law. For example, New York Penal Law, Section 180.00 provides that “[a] person is guilty of commercial bribing in the second degree when he confers, or offers or agrees to confer, any benefit upon any employee, agent or fiduciary without the consent of the latter’s employer or principal, with intent to influence his conduct in relation to his employer’s or principal’s affairs”. Because several US states have criminalised commercial bribery, the DOJ has taken the position that violations of such state commercial bribery laws can be predicate offences under the Travel Act.

Federal prosecutors may also charge private bribery or kickback schemes as mail or wire fraud under an “honest services fraud” theory.

2.2 Influence-Peddling

No federal criminal statute uses the term “influence-peddling”.

As noted elsewhere, conduct involving improper use of official authority, especially where a private party receives an “undue advantage”, may violate a variety of federal or state laws, including the federal fraud and conflict of interest statutes, abuse-of-power laws, or lobbying regulations.

The FCPA specifically prohibits giving things of value to a foreign official for purposes of “securing any improper advantage” in connection with obtaining or retaining business.

Conduct involving foreign officials may also implicate federal or state laws on fraud, conflicts of interest, or lobbying. Acting on behalf of foreign officials may also violate the US law requiring foreign government agents to register with the federal government.

2.3 Financial Record-Keeping

The FCPA requires “issuers” (generally speaking, entities whose securities are registered with the SEC and/or entities that are required to file periodic reports with the SEC) to keep accurate books and records and to establish and maintain a system of internal controls adequate to ensure that the company’s assets are managed in compliance with management’s instructions. For accounting violations, the SEC may impose civil penalties, seek injunctive relief, enter a cease-and-desist order and require disgorgement of tainted gains. Civil fines may be up to a maximum of USD963,837 for a corporation or USD192,768 for an individual, or the gross amount of the pecuniary gain per violation. Neither materiality nor knowledge is required to establish civil liability.

The DOJ has authority over criminal accounting violations (ie, where persons “knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account” required to be maintained under the FCPA). Penalties for criminal violations of the FCPA’s accounting provisions are set forth in **5. Penalties for Violations**.

2.4 Public Officials

Numerous federal statutes cover public officials’ conduct. For example, prosecutors may charge corrupt public officials for conduct related to:

- theft, wrongful conversion, embezzlement, or bribery related to or involving federal property or federally funded programmes (18 USC, Sections 641, 654, and 666);
- conflicts of interest, generally caused by federal officials engaging in official acts that could affect their personal financial interests (or those of their family members, their future employers, or certain affiliated organisations (18 USC, Sections 207–08); and
- acting with the specific intent to deprive the government of its intangible right to “honest services”, such as the public official’s uncompromised judgment, discretion, etc (18 USC, Section 1346).

2.5 Intermediaries

The FCPA and domestic statutes apply to offences committed through an intermediary.

Liability against a principal may arise for payments made by an agent or intermediary if the principal “knew” about the misconduct. This includes when the principal was aware of a high probability that the agent was making improper payments, even if the principal did not know about a specific payment or consciously avoided learning about the payment (ie, remained “wilfully blind” to it).

Companies subject to US jurisdiction commonly conduct due diligence on prospective intermediaries to mitigate these risks. For example, “red flags” in this type of diligence may include commission payments to the intermediary in excess of market value, a family or other relationships between an agent and a government official, or a recommendation of a particular agent by a government official.

2.6 Lobbyists

The national legislation obligates firms and individuals across industry sectors to disclose efforts to influence public officials. There are two key statutes that concern domestic and foreign lobbying activities.

The Lobbying Disclosure Act (LDA) is codified in 2 USC, Section 1601 et seq. The LDA defines a “lobbyist” as an individual who spends more than 20% of their time each quarter on “lobbying activities”, which encompass communications that seek to influence federal legislation, regulation, administration, and nomination processes. It does not apply to media organisations. The LDA requires lobbying entities to register and provide quarterly reports on lobbying activities. The Clerk of the House and Secretary of the Senate administer the law. The penalties include fines of up to USD200,000 per violation and, in some cases, up to five years in prison.

In turn, the Foreign Agent Registration Act (FARA) is codified in 22 USC, Section 611 et seq. The FARA defines a “foreign agent” as an individual who, on behalf of a “foreign principal”, engages in political activities, acts in a public relations capacity, solicits or dispenses anything of value, or provides repre-

sentation before any US government agency or official. A “foreign principal” is a foreign government or political party, a person outside the US (unless a US national), or group of persons organised under the law of, or having its principal place of business in, a foreign country. It does not apply to certain religious entities, academic groups, and legal representatives in legal proceedings. Foreign agents must register with the Attorney General within ten days of starting their activities, even if there is no monetary compensation for their work, and they must comply with semi-annual reporting obligations. The penalties include fines of up to USD250,000 for each violation and up to five years in prison.

3. Scope of Application

3.1 Limitation Period

Most federal crimes are subject to a five-year statute of limitations, although criminal violations of the FCPA’s accounting provisions are subject to a six-year limitations period. In some circumstances, prosecutors may be legally permitted to charge defendants for conduct that pre-dates the limitations period. For example, if the conduct is part of an ongoing scheme or conspiracy, the limitations period begins to run at the end of the scheme. However, as long as one act in furtherance of the conspiracy occurred within the five-year period, a conspiracy charge would still be timely.

State statutes of limitations vary between jurisdictions.

3.2 Geographical Reach of Applicable Legislation

Defendants are often prosecuted even where most of the criminal conduct was committed abroad, but extraterritorial jurisdiction varies from one statute to another. Non-US conduct may be covered by US law where either the specific statute applies extraterritorially, or there is a US nexus (eg, the scheme involves a US bank account).

Extraterritoriality

US law on extraterritoriality is complex and changes with judicial decisions and legislative action. Different statutes apply outside the USA in different ways.

US statutes are presumed not to have extraterritorial effect unless they include a “clear indication” to the contrary. Without a “clear indication”, courts examine the statute’s “focus” to determine whether or not an alleged violation is “domestic”.

The law continues to change in this area; some courts have found that domestic conduct is necessary, but not sufficient, to apply US law to claims that mostly arise overseas. As an initial point, US law applies on US soil – so if individuals are visiting the US (for business or pleasure), they face increased US legal risk over any business they do while on their trip. Second, US law often applies to US citizens, permanent residents (ie, “green card” holders), and entities organised under US law anywhere in the world. Non-US transactions could be exposed to US legal risk because some of the personnel are US nationals.

FCPA – Generally

The FCPA has relatively broad extraterritorial application. Criminal conduct outside the USA could result in FCPA liability under one of four theories: issuer liability, domestic concern liability, liability as an agent of an issuer or domestic concern, and, potentially, conspiracy/accomplice liability.

FCPA – Issuers

If a legal entity is an issuer of registered US securities (regardless of where the entity is headquartered), the entity may be held liable for violations of the FCPA’s anti-bribery provisions committed anywhere in the world, provided that there is a connection to the USA (eg, an email that touches the USA). If an issuer is organised under US laws, the entity may be held liable for FCPA violations, irrespective of any other connection to the US.

Issuers are also subject to the FCPA’s accounting provisions everywhere in the world.

FCPA – Domestic Concerns

US domestic concerns (ie, US nationals and businesses incorporated under US law or headquartered in the USA, and their employees, agents, etc) are required to comply with the FCPA’s anti-bribery provisions, regardless of where their operations may be located.

Such entities may be held liable for violations of the FCPA outside the USA.

FCPA – Agent Liability

A person or legal entity acting as an agent of an issuer or domestic concern can face FCPA liability for engaging in conduct in furtherance of an improper payment, even when the issuer/domestic concern did not expressly direct or authorise the improper payment. This type of liability may apply without regard to where the improper payments were made if the conduct involves a US person or there is a connection to the USA.

FCPA – Conspiracy and Accomplice Liability

If a non-US company acts in concert with another company or person, and jurisdiction can be established for that company or person (eg, because they are a domestic concern), it is possible that the non-US company could be held liable for either conspiring with or aiding and abetting the US person or legal entity that is directly subject to the FCPA, or wilfully causing the US person or legal entity to violate the FCPA. As with direct liability for issuers and domestic concerns, this type of liability may apply without regard to where any improper payments were made, as long as the co-conspirator is organised under the laws of the USA or any state in the USA, or there is a connection to the USA.

The United States Court of Appeals for the Second Circuit, however, has ruled that a non-resident foreign national may not be charged with conspiracy to violate the FCPA or with aiding and abetting an FCPA violation unless the foreign national acted as an agent of an “issuer” or a “domestic concern” or was physically present in the US. The Second Circuit is only one of 11 intermediate federal appellate courts, and the Fifth Circuit has declined to follow the same approach.

Domestic Statutes

As noted, US courts presume that most US criminal statutes do not apply extraterritorially. For example, courts have ruled that 18 USC, Sections 666, 1341, 1343, and 1346 do not apply extraterritorially.

It is important to note, however, that even if specific statutes are not applied extraterritorially, non-US con-

duct may fall under the scope of a statute that does, such as the Travel Act or some charges under 18 USC, Section 371. For example, a court has ruled that a defendant who allegedly accepted a bribe in Paris violated the Travel Act, regardless of whether or not 18 USC, Section 201 applied extraterritorially.

Moreover, statutes involving domestic bribery – that is, bribes paid to US officials – are likely to have a US nexus. Authorities are more likely to rely on a US nexus for jurisdictional arguments than a potentially complex extraterritoriality theory.

US Nexus

Even US laws that do not have extraterritorial effect may apply in cases involving foreign conduct if certain US connections exist, including emails sent through a US server, telephone calls placed to or from the United States, or US dollar-denominated transactions clearing through US correspondent bank accounts.

3.3 Corporate Liability

Under general principles of US law:

- corporations may be held criminally liable, including for violations of the FCPA or domestic bribery statutes;
- individuals and corporations may be held liable for the same offence; and
- successor entities may be held liable for offences by the target entity prior to the merger or acquisition.

Corporate Liability

Under the doctrine of respondeat superior, a corporation may be held criminally liable for the acts of its employees, agents, officers, etc, provided that:

- those acts were undertaken within the scope of their employment (even if such actions were against corporate policy – ie, the corporation is not absolved just because it has a compliance programme that states not to commit specified offences); and
- they were intended, at least in part, to benefit the corporation.

Corporate prosecutions are more common for FCPA violations than domestic bribery, but both are possible.

High-level directors, officers, etc, need not be involved for corporate criminal liability to apply. Any employee or third-party contractor can incur liability on behalf of a corporation.

Finally, a subsidiary's criminal conduct may be imputed to its parent corporation, if the subsidiary is the parent's agent. To make this determination, US authorities evaluate whether or not the parent controls the subsidiary, including through knowing about and/or directing the subsidiary's actions.

Parallel Individual and Corporate Liability

While no individual need be convicted in order for a company to face liability, DOJ policy emphasises individual accountability. Authorities often look favourably on co-operating companies that identify key individuals involved in misconduct, and may consider such efforts when assessing a company's co-operation (and any related reduction in penalties).

Successor Liability

When one company merges with or acquires another, the successor generally assumes the predecessor's liabilities under US law, including criminal liabilities. Prosecutors and regulators, however, sometimes decline to act against companies that conducted comprehensive pre-acquisition due diligence and voluntarily disclosed and remediated any potentially problematic conduct identified during the diligence.

The DOJ has held successor companies liable for the acts of predecessor companies following mergers and acquisitions when the misconduct continued after the transaction. Authorities may still take action against the predecessor (if they would have had jurisdiction over it), but the FCPA Resource Guide emphasises the value in a company with a robust compliance programme acquiring a company without one.

4. Defences and Exceptions

4.1 Defences

The FCPA includes two affirmative defences to anti-bribery charges, codified in 15 USC, Section 78dd-1 (c).

- The payment, offer, etc, “was lawful under the written laws and regulations of the... [relevant foreign] country”. A recent case held that this defence only applies where the payment is affirmatively authorised by local law (ie, the defence does not apply where the payment is simply not prohibited).
- The payment, offer, etc, were “reasonable and bona fide expenditures, such as travel and lodging expenses... [and were] directly related to the promotion, demonstration, or explanation of products or services; or the execution or performance of a contract” with a foreign government.

In practice, defendants also commonly claim that they lacked the requisite intent to commit a corruption crime, that the conduct did not involve an “official act” by a government official, or that there was no quid pro quo in which a benefit was offered in exchange for an official act.

The FCPA does not recognise a formal defence based on adequate procedures, but DOJ and SEC attorneys may take the adequacy of compliance controls into account when making charging decisions.

4.2 Exceptions

As with the defences themselves, exceptions to US criminal defences generally arise from common law, rather than specific statutory provisions. For example, a person may not be able to rely on an “advice-of-counsel” defence where the advice was obtained in bad faith (eg, they withheld key facts from outside counsel).

4.3 De Minimis Exceptions

In general, there are no statutory de minimis exceptions for violations of US criminal laws (although, as previously noted, US laws permit certain de minimis gifts for government officials). Because of US authorities’ considerable prosecutorial discretion, however, enforcement may be less likely where only de mini-

mis amounts are involved. As noted, small payments related to routine government actions may fall within the FCPA’s narrow exception for so-called facilitation payments.

4.4 Exempt Sectors/Industries

The key US anti-bribery and anti-corruption laws do not exempt any industry or sector.

However, a potential defendant’s industry or sector may informally be factored into decisions about how the government resolves a potential violation. For example, government authorities may be willing to consider how to investigate defence companies without publicising sensitive national security information.

4.5 Safe Harbour or Amnesty Programme

US authorities provide broad incentives for companies and individuals to voluntarily disclose misconduct (see 6. Disclosure Processes). From time to time, US authorities also create safe harbour programmes to further encourage disclosures.

In October 2023, the DOJ introduced a new Safe Harbour Policy for Voluntary Self Disclosures Made in Connection with Mergers and Acquisitions. Under this policy, the DOJ will presumptively decline to prosecute a company that voluntarily self-discloses misconduct that it discovers at another company that it acquired within six months of the closing date, so long as the company co-operates with the DOJ’s investigation and fully remediates the misconduct within one year of the closing date, which may include restitution and disgorgement payments. When an acquiring company voluntarily self-discloses, the acquired entity may also qualify for certain voluntary self-disclosure benefits, including potentially a declination, unless “aggravating factors” exist at the acquired entity.

5. Penalties for Violations

5.1 Penalties on Conviction FCPA

Violating the FCPA’s substantive anti-bribery provisions may result in up to five years’ imprisonment and/or a fine of up to USD250,000 for each offence

committed by an individual. Corporations may be punished by fines of up to USD2 million per violation.

Wilful violations of the accounting provisions may result in criminal fines of up to USD25 million for a legal entity. Individuals may be required to pay fines of up to USD5 million and/or serve as many as 20 years in prison. Moreover, the DOJ is authorised to seek a fine of up to twice the benefit that the defendant obtained by making the corrupt payment(s), which often represents a far greater amount than the maximum fines previously noted.

Defendants may be required to pay civil monetary penalties of USD10,000 for each violation of the anti-bribery provisions, whether by an individual or legal person. The DOJ and the SEC may also seek civil disgorgement penalties for books and records violations.

Domestic Bribery

Penalties for violating domestic bribery or fraud laws vary by jurisdiction.

For example, violations of the federal mail or wire fraud statutes may result in fines and up to 20 years' imprisonment (or 30 years' imprisonment in some circumstances). The maximum penalty for violating 18 USC, Section 201 (b) is 15 years in prison and/or substantial monetary fines; 18 USC, Section 201 (c) has a maximum prison sentence of two years and/or fines.

Collateral Consequences

Aside from imprisonment and monetary fines/penalties, an anti-corruption investigation (or even allegations that a company has violated bribery or corruption laws) could lead to several collateral consequences that could prove extremely damaging to a business or individual. Such an investigation could lead to debarment from contracting with the US government or international financial institutions, loss of important regulatory statuses under US law, and/or termination of commercial relationships.

5.2 Guidelines Applicable to the Assessment of Penalties

As previously noted, the Justice Manual, FCPA Resource Guide, and other publications provide

important guidance on how agencies assess penalties.

US Sentencing Commission Guidelines

The US Sentencing Commission Guidelines (USSG), which are a set of advisory rules designed to inform judges when imposing criminal sentences, prescribe a number of factors that may warrant enhanced or mitigated sentences. For example, the greater the monetary loss caused by a corrupt scheme, the more severe the recommended sentence. Generally speaking, bribery and other white-collar crimes do not have mandatory minimum sentences, but repeated offences are more severely punished.

The USSG permit courts to reduce criminal penalties where a company has an effective compliance programme. The DOJ often uses the USSG as a baseline to assess penalties in corporate resolutions. Chapter 8 of the USSG provides guidelines for sentencing organisations that have been convicted of a crime. It describes the elements of an "effective" compliance programme; companies with such programmes may be eligible for substantial reductions from their sentence.

The Justice Manual and Compliance Guidance

In addition, both the Justice Manual and the FCPA Resource Guide discuss self-reporting and co-operating with law enforcement, and the DOJ has provided guidance on the types of factors it considers in assessing a company's compliance programme when investigating a corporate entity (the "US Compliance Guidance"). The DOJ is not legally obligated to follow the Guidance, which is similarly not binding on other US government authorities. Even so, the DOJ and others generally take these factors into account.

The DOJ takes a functional approach to the US Compliance Guidance – the agency does not simply verify whether or not a compliance programme includes certain components (eg, a whistle-blower programme). Instead, the US Compliance Guidance emphasises that the DOJ will make an individualised assessment of a company's compliance programme based on that company's particular risk profile and specific context. Indeed, the US Compliance Guidance notes that there is no "rigid formula" for assessing compliance pro-

grammes and that the topics it addresses are not exhaustive.

While recognising that a compliance programme must be tailored to a company's particular risk profile, the Compliance Guidance identifies best practices that are common to effective compliance programmes. These practices include, but are not limited to:

- a commitment from senior management to a “culture of compliance;” a clearly articulated policy against corruption and a code of conduct;
- the assignment of responsibility for oversight and implementation of the anti-bribery and corruption compliance programme to a senior executive with appropriate experience, sufficient autonomy from management, and resources to ensure the programme is implemented effectively;
- assessing the risks faced by the company so that the company can take a risk-based approach in designing and implementing its anti-bribery and corruption compliance programme; and
- periodically testing and reviewing the anti-bribery and corruption compliance programme.

The Justice Manual also includes the FCPA Corporate Enforcement Policy (CEP). The CEP establishes a rebuttable presumption that the DOJ will decline to prosecute a company for FCPA violations if the company:

- voluntarily self-discloses misconduct;
- fully co-operates with the DOJ's investigation; and
- takes timely and appropriate remedial action.

The CEP provides insight into how the DOJ assesses compliance and remediation and potential penalty reductions for co-operating companies that do not qualify for a declination. The DOJ has since applied the same approach beyond FCPA violations.

CEP Revisions

In May 2025, the DOJ revised the CEP to reflect changes in DOJ policy and practice. These revisions create significant incentives for voluntary disclosure (see **6.2 Voluntary Disclosure Incentives**). As established in the March 2023 CEP revisions, in order to receive full credit for timely and appropriate reme-

diation, a company must show that it has a prohibition against the deletion of business records and has appropriate guidance and controls on the use of personal devices and messaging platforms, including ephemeral messaging applications.

6. Disclosure Processes

6.1 Disclosure Obligations

In general, there is no duty to disclose violations. Depending on the specifics of a particular violation, however, US individuals and/or companies may be exposed to liability for failing to disclose the violations (eg, if a violation exposes a US securities issuer to “material” risks, the issuer may face civil or criminal liability for failing to disclose the risk to its shareholders). Disclosure and co-operation with a subsequent government investigation often helps a company or individual reduce a potential penalty.

6.2 Voluntary Disclosure Incentives

The USSG and the Justice Manual (including the CEP) both encourage companies to self-disclose misconduct by offering “credit” for such co-operation. Co-operation credit is a key aspect of US criminal and regulatory defence, and it often features prominently in authorities' decisions about what type of action to bring and whether or not to do so, as well as providing a basis for reductions in penalties and other negative consequences.

In May 2025, the DOJ revised the CEP to create further incentives for voluntary disclosure, by laying out three tiers for potential penalty reductions. First, absent aggravating circumstances, the DOJ will issue a declination if a company voluntarily self-discloses, fully co-operates, and timely and appropriately remediates. Second, the DOJ will provide a non-prosecution agreement with a 75% reduction in penalties if a company self-reports to the DOJ in “good faith”, fully co-operates, and timely and appropriately remediates. Third, the DOJ will offer a resolution with up to a 50% reduction in penalties if a company meets some of the expectations for self-reporting, co-operation, and remediation. The DOJ may also consider aggravating circumstances when evaluating the latter two options.

6.3 Self-Disclosure Procedures

The process of self-disclosure and/or applying for co-operation credit is highly fact-specific and varies from one agency to another. Reporting violations of the FCPA to the DOJ or SEC, for example, may involve a written or oral outreach to personnel at the relevant DOJ or SEC enforcement division following an internal investigation. Ongoing co-operation may require providing documents or witnesses to the enforcement agency, making presentations to the enforcement agency, and providing estimates of the scheme's impact (eg, the company's gains or losses arising from a corruption scheme).

6.4 Protections Afforded to Whistle-Blowers

US law generally protects whistle-blowers from retaliatory action for reporting their reasonable belief of a possible violation of many federal or state laws. The scope of protected whistle-blower activity varies, depending on the setting and US jurisdiction.

The list below details the key statutory whistle-blowing provisions at the federal level.

- Sarbanes-Oxley (SOX) Act (principally 18 USC, Section 1514).
- Dodd-Frank Wall Street Reform and Consumer Protection Act (7 USC, Section 26).
- SEC Whistleblower Statute (15 USC, Section 78u-6).
- SEC Whistleblower Rules (17 Code of Federal Regulations (CFR), Section 240.21F).
- Commodity Futures Trading Commission (CFTC) Whistleblower Rules (17 CFR, Section 165 et seq).
- Federal False Claims Act (31 USC, Sections 3729–3733).

By way of illustration, the Sarbanes-Oxley Act (SOX) protects employees of publicly traded companies and their affiliates from retaliation for reporting alleged mail, wire, bank or securities fraud and related violations.

The details of a permissible whistle-blower protection claim (such as the statute of limitations) vary from one statute to another. For example, SOX requires an employee to file a written complaint within 180 days

after an alleged retaliation, while the Dodd-Frank Act permits claims for up to ten years.

6.5 Incentives Provided to Whistle-Blowers

The SEC and CFTC have programmes to pay monetary awards to whistle-blowers who voluntarily provide new information about a violation of relevant laws (including bribery or corruption-related offences) that leads to a successful enforcement action. Whistle-blowers may be entitled to an award if the agency recovers a monetary sanction over USD1 million. The SEC and CFTC are required to give all entitled whistle-blowers an award of at least 10% and as much as 30% of the resulting penalties. As of the end of the fiscal year 2023, the SEC programme had resulted in nearly USD2 billion in payments to almost 400 whistle-blowers since the programme began in 2011.

In April 2024, the DOJ announced a similar Corporate Whistleblower Awards Pilot Program, which will entitle non-culpable individuals to receive a portion of assets that result from successful prosecutions involving criminal or civil forfeitures. It also announced a Pilot Program on Voluntary Self-Disclosure for Individuals, which offers culpable individuals who co-operate with DOJ investigations discretionary grants of immunity, and entry into non-prosecution agreements. The programmes will run for three years. Since April 2024, several US attorneys' offices – including those in the Southern District of New York and the Northern District of California – have implemented similar programmes that allow whistle-blowers to receive non-prosecution agreements, even if those whistle-blowers were involved in the underlying misconduct.

In May 2025, the DOJ issued revised guidance for its Corporate Whistleblower Awards Pilot Program. Under this updated guidance, individuals (alone or jointly with other individuals) must meet additional criteria to qualify for payment of an award, including providing the DOJ with truthful, original information in writing that leads to civil or criminal forfeiture exceeding USD1 million in net proceeds.

Finally, a whistle-blower who files a civil action under the False Claims Act or similar state laws alleging false representations in connection with a government-funded programme may be entitled to receive a sub-

stantial award based on the damages suffered by the relevant government agency. These suits may involve corruption-related allegations (eg, that a government contract was awarded based on a false representation that the contractor was not affiliated with any public officials). The state or federal government generally has the option to intervene in these actions, but the suits may proceed to judgment without any such intervention.

7. Enforcement Trends

7.1 Enforcement

There is no US federal government agency tasked exclusively with enforcing anti-bribery and anti-corruption laws, although a variety of federal agencies share authority over various aspects of US anti-corruption issues.

State and local governments may have specific anti-bribery and anti-corruption agencies, although most state anti-corruption efforts reflect the federal approach, with criminal enforcement given to prosecutors and broader oversight and/or civil enforcement powers granted to state ethics agencies, inspectors general, election regulators, and others.

7.2 Enforcement Bodies

There are multiple anti-bribery and anti-corruption enforcement bodies.

The DOJ is the most prominent criminal authority and generally prosecutes all federal crimes, including violations of the FCPA and domestic anti-bribery statutes. State prosecutors or attorneys general may also have authority to prosecute criminal violations of state anti-bribery or anti-corruption laws. The DOJ's "piling on" policy, announced in May 2018, instructs DOJ employees to co-ordinate with one another and with other domestic and foreign authorities to avoid "a risk of repeated punishments that may exceed what is necessary to rectify the harm and deter future violations".

The DOJ periodically issues statements and memoranda regarding enforcement priorities. In February 2025, President Trump issued an executive order that

imposed a 180-day pause on any new FCPA investigations, requiring the DOJ to undertake a comprehensive review of existing FCPA investigations.

In June 2025, the DOJ issued an FCPA enforcement guidance memorandum that directed prosecutors to prioritise:

- misconduct associated with cartels and transnational criminal organisations;
- misconduct that deprived US companies of "fair access to compete and/or resulted in economic injury" to them;
- the "most urgent threats to U.S. national security... involving key infrastructure or assets", like defence capabilities;
- individuals who have "engaged in criminal misconduct, and not attribute nonspecific malfeasance to corporate structures"; and
- the most "serious misconduct", such as "substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice".

In turn, the memorandum noted that prosecutors should de-prioritise misconduct where another "appropriate foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct".

The SEC, which is charged with administering federal securities laws, civilly enforces violations of the FCPA involving US securities issuers. The CFTC has also claimed authority to take civil enforcement actions based on foreign corruption impacting US commodities markets and entities trading on those markets.

Domestic anti-bribery and anti-corruption laws are civilly administered by a wide variety of agencies and authorities. For example, at the federal level, the DOJ's civil division may civilly enforce aspects of federal ethics laws (eg, the Ethics in Government Act). The Office of Special Counsel and the Office of Government Ethics, as well as agency- or branch-specific ethics bodies, also play a role in formulating, administering, and enforcing anti-corruption laws and regulations. Generally, states have similar bodies.

There are other civil enforcement agencies that, although not specifically charged with enforcing anti-corruption or anti-bribery laws, have authority over related areas of law that anti-corruption practitioners may wish to note. For example, the Federal Election Commission pursues civil penalties against corporations that donate to political campaigns in violation of federal campaign finance laws.

7.3 Jurisdictional Reach of Enforcement Bodies

See 3.2 Geographical Reach of Applicable Legislation. US enforcement agencies' jurisdiction generally reaches as far as the statutes they enforce. Civil regulators' subject-matter jurisdiction is generally more circumscribed than that of criminal authorities. For example, the SEC can only take civil enforcement actions based on conduct affecting US securities issuers or their personnel, the CFTC can only civilly enforce laws relating to US commodities markets, and the DOJ can enforce criminal violations affecting either securities or commodities markets.

7.4 Discretion for Mitigation and Aggravation

US authorities have extensive discretion to grant defendants credit for self-reporting and other forms of co-operation, up to and including declining to bring enforcement actions.

US enforcement agencies also have discretion to resolve violations of law through negotiated agreements. These agreements account for the vast majority of criminal resolutions in the US. There are three main types of negotiated agreements: non-prosecution agreements (NPAs), deferred prosecution agreements (DPAs), and plea or settlement agreements.

- NPAs – in NPAs, the agency agrees not to prosecute on the condition that the individual or company will co-operate with the agency in its investigations of other individuals or entities and abide by other conditions (fines, monitorships, etc).
- DPAs – the agency defers filing charges, sometimes indefinitely, based on the defendant's compliance with certain conditions. Importantly, neither DPAs nor NPAs require a defendant to admit wrongdoing. This can be an important point, as it

may affect a defendant's potential civil liability to private parties.

- Plea/settlement agreements – the agency files charges and reaches an agreement with the defendant to end the enforcement action after it has already begun. As part of these agreements, the agency may agree to dismiss one or more of the charges, which often reduces the penalty.

State and federal criminal prosecutors all have the authority to enter into plea agreements. DPAs and NPAs are available at the federal level and may be available in some states, depending on local laws. Regardless of the precise form, negotiated resolutions are extremely common in most, if not all, US enforcement contexts. They often include features such as:

- a fixed term of years during which the defendant must comply with the terms of the agreement or risk the government pursuing a formal action;
- monetary penalties;
- obligations to cease ongoing violations, remediate harm caused to victims, and improve internal processes to prevent future violations;
- reporting requirements (eg, the company must report any violations of law or the negotiated resolution directly to the enforcement agency); and
- often, compliance monitors, who are appointed as neutral third parties to oversee the defendant's compliance with the law and the agreement, report to the government on the defendant's activities, and review and audit the defendant's activities.

Plea agreements are used in criminal cases and require the defendant to acknowledge guilt. Pleas must be approved by a judge and result in the entry of a conviction against the defendant. In practice, courts rarely modify or reject plea agreements proposed by the parties, but it is possible for them to do so.

Civil regulators like the SEC use settlement agreements to the same effect. A settlement agreement does not necessarily require an admission of liability or wrongdoing (although the regulator may demand one). Nor does it necessarily need to be approved by a court or automatically result in the entry of a judgment against the defendant in the same way that a plea agreement results in a conviction.

7.5 Recent Landmark Investigations or Decisions

Landmark Investigations and Decisions

Comunicaciones Celulares S.A.

In November 2025, Comunicaciones Celulares S.A. (Comcel), a subsidiary of Millicom International S.A., entered into a two-year DPA with the DOJ to resolve alleged violations of the anti-bribery provisions of the FCPA in connection with its business operations in Guatemala. At the time of the conduct, Comcel operated as a joint venture over which Millicom lacked operational control. Comcel paid a USD60 million monetary penalty and forfeited USD58.2 million in proceeds from the conduct. Millicom also agreed to certain obligations, including continued co-operation, compliance reporting, and compliance certifications. The resolution reflects the first criminal FCPA resolution since June 2025, when the Trump Administration lifted a pause on FCPA enforcement and issued new enforcement guidance.

Telefónica Venezolana C.A.

In November 2024, Telefónica Venezolana, a subsidiary of Spain-based Telefónica S.A., entered into a three-year DPA with the DOJ to resolve allegations of conspiracy to violate the anti-bribery provisions of the FCPA. The company paid USD85.2 million in penalties after admitting to bribing Venezuelan government officials in 2014 and 2015 to gain preferential access to US dollars through a government-run currency auction. Under the terms of the agreement, Telefónica must enhance its compliance programme, report remediation efforts, and co-operate with ongoing investigations. Notably, despite its later co-operation, Telefónica did not receive credit for voluntary disclosure because of its initial failure to produce records and information in the early stages of the DOJ's investigation.

Raytheon Company

In October 2024, Raytheon Company entered into agreements with the DOJ, the SEC, and the US Department of State to resolve allegations involving foreign bribery, defective pricing, and export control violations. The DOJ DPA addressed, among other issues, Raytheon's alleged conspiracy to violate the anti-bribery provisions of the FCPA by engaging in a scheme to bribe a Qatari government official. Under

the DOJ DPA related to FCPA violations, Raytheon paid a USD230.4 million criminal monetary penalty and forfeited USD36.7 million and, under the SEC DPA related to FCPA violations, Raytheon paid a USD75.1 million civil monetary penalty and was subject to disgorgement of USD49.1 million in profits. In total, Raytheon agreed to pay over USD950 million across all settlements related to FCPA- and non-FCPA violations. The resolutions required Raytheon to appoint an independent compliance monitor and implement enhancements to its compliance programme.

Domestic Corruption Statutes

There have also been high-profile developments involving domestic corruption statutes in recent years, including:

- an April 2025 dismissal of federal charges against New York City Mayor Eric Adams for allegedly accepting bribes (eg, luxury travel) in exchange for using his political positions to benefit foreign nationals, businessmen, and others;
- an August 2024 federal indictment of Washington, DC Council-member Trayon White for allegedly accepting bribes (eg, cash payments) in exchange for using his political position to benefit multiple government contractors; and
- a July 2024 federal conviction of US Senator Robert Menendez for allegedly accepting bribes, including cash and gifts, in exchange for using his political influence to benefit the government of Egypt in violation of US bribery, fraud, extortion, and foreign agent laws.

Enforcement Trends

The 2024 annual report of the DOJ's Fraud Section states that the FCPA Unit charged 23 individuals in 2024, 16 of whom were convicted by guilty plea or after trial; in the same year, the FCPA Unit at the Fraud Section reached nine corporate resolutions involving the imposition of USD1.67 billion in global fines, penalties and forfeiture.

7.6 Level of Sanctions Imposed

FCPA resolutions have included some of the biggest monetary penalties in US criminal and regulatory history. Many penalties have reached into the hundreds of millions of dollars.

Individuals, too, can pay a substantial monetary fine or serve prison sentences for bribery or corruption schemes. Typical prison terms for these crimes are often less than ten years, but have ranged as high as 15 years for an FCPA violation and longer for domestic statutes.

8. Compliance Expectations

8.1 Compliance Obligations

The national legislation does not establish an affirmative duty to prevent corruption (although, as noted elsewhere, US “issuers” are required to maintain an adequate system of internal controls and accurate books and records).

8.2 Compliance Guidelines and Best Practices

The DOJ publishes guidance on the Evaluation of Corporate Compliance Programs (ECCP) for prosecutors to evaluate whether or not a corporation’s compliance programme was effective at the time of an offence and at the time of resolution, which can affect the appropriate form of resolution, monetary penalty, and corporate obligations. The ECCP therefore sets out expectations for an effective compliance programme, including whether or not the programme is well designed, applied in good faith, and works in practice.

In its September 2024 update to the ECCP, the DOJ introduced several key changes that reflect evolving risk areas. The revised guidance places a strong emphasis on how companies manage risks associated with emerging technologies, particularly artificial intelligence, requiring corporations to engage in proactive oversight and ethical governance. It also broadens expectations around safeguarding of whistle-blowers and anti-retaliation policies. Additionally, the DOJ now stresses the importance of providing compliance functions with timely access to data and adequate resources, including data analytics tools.

8.3 Compliance Monitorships

The DOJ and SEC may require an independent compliance monitor as part of a corporate resolution. Monitors assess the effectiveness of a company’s

compliance programme and determine whether or not a corporation is ready for release after an established period of time.

DOJ policy has shifted over time on whether to favour or disfavour monitorships. In May 2025, the DOJ issued a “Memorandum on Selection of Monitors in Criminal Division Matters”, which reflects a more restrained approach. The DOJ emphasised that monitorships should be imposed only when necessary, and not as a punitive measure. They must be narrowly tailored to address specific risks and compliance concerns while minimising cost and disruption to business operations. Prosecutors must also evaluate factors such as the severity of the wrongdoing, the company’s existing compliance programmes, and its ability to self-remediate.

Despite this change in enforcement approach, many corporations remain under monitorships due to pre-existing co-operation obligations.

9. Assessment

9.1 Assessment of the Applicable Enforced Legislation

Anti-bribery and corruption enforcement is routinely subject to assessment by the US government itself, as well as civil society organisations and international institutions.

OECD Evaluation

In November 2020, the OECD released an updated evaluation of US anti-bribery and corruption enforcement. The OECD generally commended the US efforts but also included a few potential future improvements.

Among the strengths, the OECD stated that US enforcement authorities have increasingly addressed the “demand side” of bribery by charging foreign public officials and their associates. It also positively noted the US commitment to co-ordinating multi-jurisdictional investigations with agencies in other countries.

While the report was largely positive, it nonetheless recommended improvements in the detection of foreign bribery, the continued harmonisation of DOJ

and SEC enforcement approaches, and increased tracking of debarments stemming from bribery-related enforcement actions by foreign governments and multilateral financial institutions. In an October 2022 follow-up report, the OECD found that, since the adoption of its original report in 2020, the US had fully or partially implemented nearly eight out of its nine recommendations.

The European Court of Human Rights and GRECO

In December 2023, the Council of Europe's Directorate General for Human Rights and Rule of Law: Group of States against Corruption (GRECO) issued a report assessing anti-corruption laws and practices. The report noted areas where the USA had made progress since previous evaluations, but it identified additional points for improvement, including greater accountability for the President and Vice-President, greater transparency of lobbyists, more risk evaluation relating to personnel changes in the Executive branch, and a dedicated FBI anti-corruption strategy.

9.2 Likely Changes to the Applicable Legislation of the Enforcement Body

US government authorities frequently revise enforcement policies and priorities, which can affect the scope and practice of federal anti-corruption laws. It is possible, for example, that recent DOJ pilot programmes on corporate whistle-blower awards as well as compensation incentives and clawbacks may become permanent programmes in the future. Furthermore, DOJ leaders have signalled an intention to focus greater attention to how companies mitigate the risk of misusing artificial intelligence and other disruptive technologies, starting with recent updates to the ECCP on this topic.

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