

# NEW USA FCPA GUIDELINES MAKES IT IMPERATIVE FOR MEXICAN COMPANIES TO IMPLEMENT ROBUST COMPLIANCE PROGRAMS

JUNE 2025

## Executive Summary:

- In line with President Trump's Executive Order, the U.S. Department of Justice issued new guidelines for the enforcement of the FCPA, limiting investigations to serious misconduct involving organized crime, national security and competition. The aim is to avoid criminalizing "customary business practices" involving facilitating and/or expediting payments. The latter constitutes a call for Mexican companies to make sure to have robust compliance programs in line with all applicable anti-corruption provisions, taking into account that under Mexican law, all forms of corruption are strictly prohibited, which, if verified, may result in significant administrative and/or criminal penalties.


In accordance with the Executive Order signed by President Donald J. Trump on February 10, the Department of Justice issued on June 9, the guidelines to be observed when pursuing FCPA investigations and enforcement actions.

- President Trump's Executive Order directed for the Department of Justice to cease initiation of any new FCPA investigations or enforcement actions and review all existing ones until updated guidelines or policies were issued, guaranteeing the efficient use of federal law enforcement resources prioritizing American economic competitiveness in accordance with his foreign policy prerogatives.
- In compliance with what was set in place in such Executive Order, the Department of Justice issued the instructed guidelines, calling prosecutors to consider when pursuing FCPA investigations and enforcement actions, among others, the following criterion:
  - Cartels and Transnational Criminal Organizations. Consider whether the alleged

misconduct is associated with the criminal operations of a Cartel or Transnational Criminal Organizations ("TCOs"); involves money launderers that engage in money laundering for Cartels or TCOs; or is linked to employees of state-owned entities or other foreign officials who have received bribes from Cartels or TCOs.

- Safeguarding Fair Opportunities for U.S. Companies. Prioritize the investigation and prosecution of conducts undermining the principles of competitiveness, national security and economic prosperity, focusing on pursuing companies that bribe foreign officials to obtain or retain business at the expense of a fair access to compete, seeking to equally prosecute, foreign officials demanding such bribes and the entities or individuals acceding to such requests.
- Advancing U.S. National Security. Focus on the most urgent threats to U.S. national security resulting from the bribery of foreign officials involving key infrastructure or assets.

- Prioritize investigations of Serious Misconduct. Prosecutors are called not to penalize Americans for “routine business practices in other nations”, mindful that the FCPA contains an exception for facilitating and expediting payments, allowing affirmative defenses for reasonable and bona fide expenditures that are lawful under the laws of the corresponding foreign country. FCPA investigations and enforcement actions shall not focus on alleged misconduct involving routine business practices entailing *de minimis* courtesies. Rather, focus should be put on alleged misconduct that bears strong indicia of corrupt intent tied to sophisticated bribery schemes and efforts to obstruct justice.
- Such guidelines are an important call for Mexican companies to review their compliance programs, making sure they comply with the applicable laws, regulations, guidelines and/or principles, of any jurisdiction in which they have presence, underlining that for the specific case of Mexico, there is an absolute prohibition to incur in conducts resulting in corruption, including the realization of facilitating and expediting payments, which if carried out, may result in the imposition of important sanctions resulting from the update of a serious administrative fault or criminal offense.



The “Guidelines for Investigations and Enforcement of the FCPA” are available in the following link:

[Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act.](#)

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