KPMG

Regulatory Alert

Regulatory Insights

November 2021

DOJ shifts policies, encourages companies to focus on compliance investment

Changes to guidance at DOJ signal an increased scrutiny on individual and corporate accountability. Given the rise in supervisory and potential enforcement activities under the current Administration, companies should actively evaluate and reinforce their compliance programs and controls, and consciously invest in building a corporate culture that fosters compliance and accountability throughout the ranks of their organizations.

The Department of Justice (DOJ) recently announced immediate changes to its corporate criminal enforcement policies and practices intended to strengthen its ability to hold individuals and corporations accountable for violations related to inadequate or deficient compliance programs and misconduct. These changes, which are characterized as first steps, include:

- Clarification that corporations must **provide information about all individuals** involved in, or responsible for, the misconduct at issue to be eligible for any cooperation credit.
- Instructions for prosecutors to **consider a corporation's full criminal, civil, and regulatory record, both domestic and foreign,** when deciding what resolution is appropriate.
- Imposition of **independent monitors when deemed appropriate** to assure a corporation is meeting its compliance and disclosure obligations.

In taking these steps, DOJ states that it is the department's responsibility to incentivize responsible corporate citizenship, a culture of compliance, and a sense of accountability. "A corporate culture that fails to hold individuals accountable, or fails to invest in compliance—or worse, that thumbs its nose at compliance—leads to bad results." Clear regulatory guidance, the agency says, can strengthen the case for proactively taking the measures necessary to root out misconduct and promote compliance investment. It adds that a company's record of misconduct speaks directly to its overall commitment to compliance programs and the appropriate culture to disincentivize criminal activity.

Under the new guidance, monitorships will be considered when an investigation reveals a company's compliance program and controls are untested, ineffective, inadequately resourced, or not fully implemented at the time of a resolution. This is particularly true if the investigation reveals that a compliance program is deficient or inadequate in numerous or significant respects. (*See KPMG Regulatory Alert on DOJ Effective Compliance Programs linked below.*)

Relevant links:

- DOJ remarks at the of ABA's National Institute on White Collar Crime, available here.
- DOJ *Memorandum on the Corporate Crime Advisory Group and Initial Revisions to the Corporate Criminal Enforcement Policies*, available here.
- Regulatory Alert | Effective compliance programs – Updated DOJ guidance, available here.
- Regulatory Alert | Chief Compliance Officer liability framework: Proposal for financial services, available here.

For additional information, please contact Amy Matsuo.

Contact the author:

Amy Matsuo
Principal and Leader
ESG and Regulatory Insights
amatsuo@kpmg.com

kpmg.com/socialmedia