

DOJ Announces Change to Guidelines Regarding Corporate Cooperation

Late last week, the Department of Justice announced a slight but important change in its policy with respect to cooperation credit for corporations. By way of brief background, since late 2015 the Department of Justice's stated policy has been that corporations could not receive any credit for cooperating in a criminal investigation unless and until it identified all individuals involved in the misconduct, regardless of position or level of involvement. *See* [link](#). Identifying every last individual involved in corporate misconduct has proven difficult to implement in practice, however, and DOJ lawyers were often forced to disregard the official policy where a corporation identified the misconduct as well as those primarily responsible for the misconduct. Recognizing this, Deputy Attorney General Rod Rosenstein has officially amended the policy. This change is most relevant to the work of DOJ's Fraud Section, overseen by Sandra Moser.

Going forward, a corporation will be eligible for cooperation credit if it identifies "every individual who was substantially involved in or responsible for the misconduct." Under this revised policy, the Department will focus on the "individuals who play significant roles in setting a company on a course of criminal conduct" but may choose to not insist on identification of "individuals whose involvement was not substantial, and who are not likely to be prosecuted." The change is designed to provide DOJ attorneys with more discretion in assessing the efforts of a company to cooperate. It remains to be seen how this will be implemented in practice, including how the Department will interpret "substantial" involvement, and whether it will also amend its FCPA guidelines to allow for cooperation credit where less than every individual involved has been identified. The Deputy Attorney General's full remarks are attached with the relevant portion highlighted.

While this does not change how we practice on a daily basis, it should make it easier for our clients to obtain full cooperation credit in the right circumstances.

As always, we are available to discuss any time.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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