



COALITION FOR INTEGRITY:
EVALUATION OF
UNITED STATES' FOREIGN
BRIBERY ENFORCEMENT



Coalition for Integrity



Coalition for Integrity

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TABLE OF CONTENTS

Introduction	1
Discussion	4
I. New Initiatives: Tackling the Demand Side of Transnational Bribery	4
II. Current FCPA Enforcement Policies	10
A. Balancing Between Corporate and Individual Enforcement Actions.....	15
B. Preventing Political Interference in Sentencing	16
III. The Revolving Door	18
IV. Judicial Review and Transparency.....	21
V. The U.S. Approach to Small Facilitation Payments	23
Conclusion	27

COALITION FOR INTEGRITY POLICY PAPER SUBMITTED IN CONNECTION WITH THE PHASE 4 EVALUATION OF THE UNITED STATES' IMPLEMENTATION OF THE OECD ANTI-BRIBERY CONVENTION

Introduction

Corruption has a corrosive effect on society. It impedes economic growth and international development, undermines democratic institutions and the rule of law, and traps millions of people in poverty. Corruption also damages business. It distorts competition, and presents serious legal, financial, and reputational risks. Free and fair competition and thriving societies require that governments, companies, and individuals take meaningful action to combat corruption.

The United States has demonstrated great leadership in passing and continuing to enforce the Foreign Corrupt Practices Act (“FCPA”), the principal legal instrument aimed squarely at combating corruption in international business transactions. Additionally, U.S. administrations under leaders from both major political parties have championed international anti-corruption initiatives, including the OECD Anti-Bribery Convention, which promotes concerted action by over forty countries to combat international business bribery and the solicitation of bribes by government officials.

As an organization focused on combatting corruption, the Coalition for Integrity (“C4I”) has been pleased with many aspects of the United States’ commitment to promoting a robust enforcement framework against those who engage in corrupt conduct. Because the FCPA plays such a critical role in combating bribery in international business transactions, C4I believes that ensuring a credible and robust FCPA enforcement regime should be a central focus of the United States’ anti-corruption efforts.

To that end, C4I appreciates the opportunity to submit comments to the OECD in connection with the Phase 4 Evaluation of the United States' implementation of the OECD Anti-Bribery Convention. The Coalition will focus its comments on certain issues in the Phase 4 Evaluation on which it has been particularly engaged. In the order discussed below, they are:

- I. New Initiatives: Tackling the Demand Side of Transnational Bribery;
- II. Current Foreign Corrupt Practices Act ("FCPA") Enforcement Policies;
 - A. Balancing Between Corporate and Individual Enforcement Actions;
 - B. Preventing Political Interference in Sentencing;
- III. The Revolving Door;
- IV. Judicial Review and Transparency; and
- V. The U.S. Approach to Small Facilitation Payments.

Before turning to these specific topics, however, a few general comments are in order.

As a general matter, C4I believes that the U.S. enforcement regime for the FCPA works reasonably well. The United States has had a sustained and robust level of FCPA enforcement for many years now, including recently. Enforcement officials have at their disposal a range of enforcement tools, and have developed policies that are designed to incentivize companies to bring misconduct to the attention of the authorities, cooperate with government investigations, invest in effective compliance programs to prevent, detect, and remediate misconduct, and to maximize deterrence through both individual and corporate prosecutions. U.S. policies have also evolved to facilitate international cooperation and the crediting of penalties in a world where, based largely on the success of the OECD Anti-Bribery Convention, multiple countries may now have jurisdiction to prosecute the same conduct.

There are also some tensions within the U.S. enforcement system. The U.S. system, for example, gives prosecutors significant discretion, and there are those who question whether there should be more judicial oversight of that discretion. At the same time, there is significant transparency around U.S. enforcement activity, calling into question whether such increased oversight is in fact necessary.

However, one definitive concern for C4I relates to recent comments by the current Administration (including President Donald Trump and National Economic Council Director Larry Kudlow) calling into question the Administration's commitment to a strong FCPA enforcement regime.¹ C4I believes that a weakening of FCPA enforcement would be a move in the wrong direction. Now is not the time to send the signal that the U.S. is reconsidering the strength of its FCPA enforcement regime. Instead the Administration should focus on effectively enforcing the FCPA, advocating for strong and consistent enforcement of the OECD Anti-Bribery Convention, and pressing major economic competitors such as China and India to become signatories to and enforce the obligations of the OECD Anti-Bribery Convention. Such an approach would be consistent with U.S. leadership in the area of anti-corruption and beneficial to U.S. companies and workers who behave with integrity and consistent with the law.

¹ Letter from Shruti Shah, President and CEO of the Coalition for Integrity to Lawrence A. Kudlow, Assistant to the President for Economic Policy and Director of National Economic Policy (January 21, 2020). <https://www.coalitionforintegrity.org/wp-content/uploads/2020/01/Coalition-letter-to-LKudlow1.21.2020.pdf>.

Discussion

I. NEW INITIATIVES: TACKLING THE DEMAND SIDE OF TRANSNATIONAL BRIBERY

As observed in the OECD Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States (“Phase 3 Report”), private sector firms have become increasingly frustrated with demand-side issues, including the solicitation of facilitation payments, and have sought support to address the demand of bribes.² To that end, a flurry of recent U.S. legislative initiatives have focused on providing the U.S. Government with a wider range of tools to combat the demand side of transnational official bribery. These bills, if enacted, would represent a significant expansion of U.S. anti-corruption laws, which currently stop short of permitting enforcement actions against foreign officials who demand or accept bribes from U.S. firms or others subject to U.S. jurisdiction. These bills would, respectively, expose the names and conduct of kleptocrats around the world (H.R. 3441), shine a light on ill-gotten gains hidden in the United States (H.R. 4361), ban entry to the United States of individuals who engage in, support, or conspire to engage in acts of corruption against U.S. persons (H.R. 2167), and criminalize demands for bribes by corrupt foreign officials (H.R. 4140). An additional set of bills would refocus U.S. foreign policy on global corruption as a key national security threat through the establishment of an Anti-Corruption Action Fund (H.R. 3843/S. 3026).

- The Kleptocrat Exposure Act, H.R. 3441, would authorize the U.S. Secretary of State to reveal the identities of individuals (and their immediate family members) who are subject to U.S. visa bans as a result of, among other activities, corruption. Conduct covered includes (1) being complicit in, ordering, controlling, or otherwise directing acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government

² Phase 3 Report at p. 31.

contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions and (2) materially assisting, sponsoring, providing financial, material, or technological support for, or goods and services in support of, any of the above.

- The Justice for Victims of Kleptocracy Act, H.R. 4361, would instruct the U.S. Department of Justice (“DoJ”) to publish on its website the amount of money that was “stolen from the people of” various countries and “recovered by the United States” pursuant to enforcement activities against foreign corrupt practices. The bill also expresses an intent to return those funds recovered by the U.S. Government for the benefit of the people from whom they were stolen at such a time as the United States can ensure that the money will not be stolen again.
- The Foreign Corruption Accountability Act (FCAA), H.R. 2167, would authorize visa bans on “foreign persons” who engage in, support, or conspire to engage in acts of corruption against “U.S. foreign investors.” Sanctionable conduct under the bill includes: (1) “public sector corruption activities” ((a) soliciting or accepting bribes; (b) using the authority of the state to extort payments, unjustly coerce or intimidate the U.S. foreign investor, or otherwise unjustly thwart investment by the U.S. foreign investor; or (c) obstructing or otherwise improperly manipulating or interfering with the impartial operation of judicial or law enforcement processes); (2) expropriation of the assets of a U.S. foreign investor without providing just compensation; (3) extortion, use of force, or the threat of use of force against a U.S. foreign investor, their family, employees, or associates; and (4) support for or conspiracy to engage in any of the above. A list of individuals sanctioned under this authority and the rationale for imposing sanctions would be provided to the appropriate U.S. congressional committees on an annual basis.
- The Foreign Extortion Prevention Act (FEPA), H.R. 4140, would criminalize bribery demands (i.e., extortion) by corrupt foreign officials. In particular, any “foreign official” or “person selected to be a foreign official” may face a monetary fine and/or prison term of up to two years for corruptly demanding, seeking, receiving,

accepting, or agreeing to receive or accept anything of value (personally or for any other person/entity) in return for (1) being influenced in the performance of any official act or (2) being induced to do or omit to do any act in violation of the official duty of such official or person.

- The Countering Russian and Other Overseas Kleptocracy (CROOK) Act, H.R. 3843/S. 3026, would establish an Anti-Corruption Action Fund, funded through taking five percent of each civil and criminal fine or penalty imposed pursuant to actions brought under the FCPA, to “aid foreign states to prevent and fight public corruption and develop rule of law-based governance structures.” An interagency task force would be established to evaluate the effectiveness of programs funded by the Anti-Corruption Action Fund that have an impact on promoting good governance in foreign states and enhancing the ability of foreign states to combat public corruption.

The proposed legislation discussed above follows the passage and implementation of the Global Magnitsky Human Rights Accountability Act (“Global Magnitsky Act”)³, which was signed into law on December 23, 2016. The Act grants the U.S. Government the authority to impose sanctions on any foreign persons, including foreign government officials, involved in human rights abuses anywhere in the world. It also provides the U.S. Government with the authority to levy those same sanctions against any “government official” or “senior associate of such an official” who “is responsible for, or complicit in, ordering, controlling, or otherwise directing, acts of significant corruption, including the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions,” as well as anyone who has assisted any such person in the support of any such activity. Sanctions available to the Government include the denial of entry into the United States and blocking of all transactions in all property and interests in property that are within the United States’ jurisdiction. The Global Magnitsky Act has been used to sanction hundreds of individuals and entities – 97 in 2019 alone.⁴ The diverse range of

³ 22 U.S.C. § 2656.

⁴ United States Takes Action Against Corruption and Serious Human Rights Abuses (December 10, 2019). <https://www.state.gov/united-states-takes-action-against-corruption-and-serious-human-rights-abuse/>.

individuals sanctioned under the Act includes former heads of state and other government officials⁵ as well as those with varying positions in the private sector.⁶

In addition, the proposed legislation complements DoJ policies and programs already in place. For instance, in late 2009, the DoJ launched a Kleptocracy Asset Recovery Initiative aimed at “redoubling [the] commitment” of the agency to recover assets stolen by kleptocrats.⁷ The Money Laundering and Asset Recovery Section in the Criminal Division of the DoJ is home to the Kleptocracy Asset Recovery Initiative. A team of dedicated prosecutors works to prosecute individuals and secure the forfeiture of the proceeds of foreign official corruption that has affected the U.S. financial system and, where appropriate, return those proceeds to benefit the people harmed by these acts of corruption and abuse of office. The agency’s commitment to this mission has been manifest in certain recent high-profile enforcement actions against foreign kleptocrats.

For instance, as the OECD is likely aware, in late 2019, the DoJ settled a civil forfeiture case against Malaysian financier Low Taek Jho (“Jho Low”) for using funds allegedly misappropriated from 1Malaysia Development Berhad (“1MDB”), Malaysia’s investment development fund, and laundering them through financial institutions in several jurisdictions, including the United States. As described by the DoJ, the “settlement agreement forces Low and his family to relinquish hundreds of millions of dollars in ill-gotten gains that were intended to be used for the benefit of the Malaysian people, ... send[ing] a signal that the United States will not be a safe haven for the proceeds of corruption.”⁸ Through the conclusion of the settlement agreement, together with the prior disposition of other related forfeiture cases, the United States recovered or

⁵ United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe (December 21, 2017). <https://home.treasury.gov/news/press-releases/sm0243>. Treasury Works with Government of Mexico Against Perpetrators of Corruption and their Networks (May 17, 2019). <https://home.treasury.gov/news/press-releases/sm692>.

⁶ United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe (December 21, 2017). <https://home.treasury.gov/news/press-releases/sm0243>.

⁷ Attorney General Eric Holder at the Opening Plenary of the VI Ministerial Global Forum on Fighting Corruption and Safeguarding Integrity (November 7, 2009) (“There is no gentle way to say it: When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid, they condemn their nations’ children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative. In response to this ongoing challenge, I stand before you to announce a redoubled commitment on behalf of the United States Department of Justice to recover such funds”). <https://www.justice.gov/opa/speech/attorney-general-eric-holder-opening-plenary-vi-ministerial-global-forum-fighting>.

⁸ U.S. Reaches Settlement to Recover More Than \$700 Million in Assets Allegedly Traceable to Corruption Involving 1MDB (October 30, 2019). <https://www.justice.gov/usao-cdca/pr/us-reaches-settlement-recover-more-700-million-assets-allegedly-traceable-corruption>.

assisted in the recovery of more than \$1 billion in assets associated with the 1MDB international money laundering and bribery scheme, the largest recovery to date under the Kleptocracy Asset Recovery Initiative and the largest civil forfeiture ever concluded by the DoJ.⁹

Also in 2019, the DoJ charged Gulnara Karimova, the daughter of late Uzbekistan President Islam Karimov, of conspiracy to commit money laundering. The charges include allegations that Karimova participated in a bribery and money laundering scheme involving more than \$865 million in bribes from Mobile TeleSystems PJSC (“MTS”), VimpelCom Limited (now VEON), and Telia Company AB (“Telia”) aimed at securing her assistance in entering and maintaining their business operations in Uzbekistan’s telecommunications market.¹⁰ According to the DoJ, the case “demonstrate[s] the Department’s comprehensive approach to foreign corruption... aggressively pursu[ing] both corrupt foreign officials and the companies and individuals who bribe them in order to gain unfair business advantages.”¹¹ Along those lines, the DoJ and the U.S. Securities and Exchange Commission (“SEC”) charged MTS and its Uzbek subsidiary, Kolorit Dizayn Ink LLC (“Kolorit”), with conspiracy to violate the anti-bribery and books and records provisions of the FCPA and violation of the FCPA’s internal control provisions, resulting in the payment of a \$100 million civil penalty to the SEC and approximately \$750 million to the DoJ.¹² The DoJ had previously entered into resolutions and collected criminal fines and forfeitures from VimpelCom (2016)¹³ and Telia (2017).¹⁴

⁹ *Id.*

¹⁰ Mobile Telesystems Pjsc and Its Uzbek Subsidiary Enter into Resolutions of \$850 Million with the Department of Justice for Paying Bribes in Uzbekistan (March 7, 2019). <https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsidiary-enter-resolutions-850-million-department>.

¹¹ *Id.*

¹² *Id.*

¹³ VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than \$795 Million; United States Seeks \$850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (February 18, 2016). <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>.

¹⁴ Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than \$965 Million for Corrupt Payments in Uzbekistan (September 21, 2017). <https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965>.

The Karimova prosecution is not the first case in which U.S. anti-money laundering laws have been used to pursue corrupt officials. C4I supports these efforts, which are important to prevent the United States from becoming a safe haven for the proceeds of corruption. But more can be done.

C4I believes that the proposed legislation discussed above generally represents a positive development with respect to combating global corruption and we support the corruption-related aspects of these bills. In our view, a holistic approach to the problem of foreign bribery is critical. While recognizing that asserting jurisdiction for criminal enforcement purposes over foreign officials is a significant step, in our view it is a necessary one to address a current accountability gap. To this end, C4I supports the criminalization of solicitation of bribes from U.S. persons by corrupt foreign officials and the patchwork of other deterrent mechanisms – from barring corrupt officials from entering the United States to naming them publicly – aimed squarely at the demand side of bribery. The elevation of global corruption as a major foreign policy and national security issue through the CROOK Act, including through the support of programs aimed at promoting the rule of law overseas, is also something C4I supports wholeheartedly.

Although enacting legislation falls within the purview of the Congress, C4I believes that it would be beneficial for the Administration, including the DoJ, to signal support for the proposed legislation discussed above to the extent that it tackles the demand side of transactional bribery generally. Such support would, if nothing else, indicate that the proposed legislation will be signed by the President if enacted, which may incentivize lawmakers to move forward more quickly.

II. CURRENT FCPA ENFORCEMENT POLICIES

The enforcement agencies' enforcement policies are guided by a variety of principles, both general and specific to the FCPA.

With respect to the DoJ, the Principles of Federal Prosecution of Business Organizations ("Principles") provide guidance regarding the resolution of cases involving corporate wrongdoing. The Principles instruct federal prosecutors to consider a company's cooperation in determining how to resolve a corporate criminal case. Prosecutors may consider whether the company made a **voluntary and timely disclosure**, as well as the company's **willingness to provide relevant information and evidence** and identify relevant actors inside and outside the company, including senior executives.¹⁵ In addition, prosecutors may consider a company's **remedial actions**, including efforts to improve an existing **compliance program** or **appropriate disciplining** of wrongdoers. A company's remedial measures should be meaningful and illustrate its recognition of the seriousness of the misconduct, for example, by taking steps to implement the personnel, operational, and organizational changes necessary to establish an awareness among employees that criminal conduct will not be tolerated.¹⁶

Similarly, Chapter 8 of the Sentencing Guidelines ("Guidelines"), which governs the sentencing of organizations, takes into account an organization's remediation as part of an effective compliance and ethics program.¹⁷ Such a program would, *inter alia*, provide for reasonable steps to respond appropriately to the criminal conduct once identified and to prevent further similar criminal conduct, including through changes to the organization's compliance and ethics program.¹⁸ An effective compliance and ethics program may lead to a three-point reduction in an organization's culpability score, which affects the calculation of fines under the Guidelines.¹⁹ Similarly, an organization's self-

¹⁵ Resource Guide at p. 54.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

reporting, cooperation, and acceptance of responsibility may lead to fine reductions by decreasing the culpability score under the Guidelines.²⁰

In 2017, the DoJ issued the FCPA Corporate Enforcement Policy (“CEP”). Last year, minor clarifications to the CEP were issued.²¹ The CEP creates a presumption of a public declination with disgorgement for companies that meet all standards of “voluntary self-disclosure, full cooperation, and timely and appropriate remediation,” absent aggravating factors involving the seriousness of the offense or the nature of the offender.²² The CEP details each of these requirements.²³ And, even where aggravating factors exist and a declination is unavailable, the DoJ will apply a 50% fine reduction for self-disclosure, full cooperation, and timely and appropriate remediation and a 25% reduction for full cooperation and remediation without voluntary disclosure.

²⁰ *Id.*

²¹ Justice Manual 9-47.120 - FCPA Corporate Enforcement Policy. <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977>.

²² Examples of aggravating factors are: executive involvement; pervasiveness; significant profits from misconduct; and criminal recidivism.

²³ For example, “**voluntary self-disclosure**” must (1) be prior to imminent threat of disclosure of government investigation; (2) be disclosed to the DoJ within a “reasonably prompt time after becoming aware of the offense”; and (3) include disclosure of all relevant facts known to the company, including about all individuals “substantially involved in or responsible for” the legal violation. “**Full cooperation**” includes threshold requirements under JM 9-28.000 plus: (a) timely disclosure of all facts relevant to wrongdoing gathered in company’s investigation and attribution to specific sources (where it does not violate attorney-client privilege), including all facts regarding involvement of officers, employees, or agents and all known facts regarding potential criminal conduct by third parties (and their officers, employees, and agents); (b) proactive cooperation – even when not asked; (c) timely preservation, collection, and disclosure of documents and information regarding their provenance (the company bears the burden of proving any blocking statutes or data privacy laws that prevent disclosure); (d) where requested, de-confliction of witness interviews and other investigative steps with the DoJ; and (e) where requested, making officers and employees available for DOJ interviews, including where possible former officers/employees and officers/employees/agents located overseas. “**Timely and Appropriate Remediation**” includes (a) root cause analysis and remediation addressing causes and mitigating risk of recurrence; (b) implementation of an effective compliance and ethics program; (c) appropriate discipline of employees responsible through direct participation or failure in oversight and those with supervisory authority; and (d) appropriate retention of business records and guidance/controls re personal communications and ephemeral messaging platforms. Justice Manual 9-47.120 - FCPA Corporate Enforcement Policy. <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977>.

Since the last OECD evaluation, the DoJ has also issued guidance on compliance programs,²⁴ a “no piling on” policy,²⁵ and a monitorship policy.²⁶

With respect to the SEC, the framework for evaluating cooperation by companies has not changed in recent years, but is set forth in the *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (“Seaboard Report”)*.²⁷ The Seaboard Report details the many factors SEC considers in determining whether and to what extent it grants leniency to companies for cooperating during investigations and other measures of good corporate citizenship.²⁸

In reaching agreements with companies based on the above considerations, the enforcement agencies have a variety of settlement vehicles, including plea agreements,

²⁴ Criminal Division Announces Publication of Guidance on Evaluating Corporate Compliance Programs (April 30, 2019). <https://www.justice.gov/opa/pr/criminal-division-announces-publication-guidance-evaluating-corporate-compliance-programs>. See also U.S. Department of Justice Criminal Division, Evaluation of Corporate Compliance Programs (April 2019). <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

²⁵ Deputy Attorney General Rod Rosenstein Delivers Remarks to the New York City Bar White Collar Crime Institute (May 9, 2018). <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar>.

²⁶ Assistant Attorney General Brian A. Benczkowski Delivers Remarks at NYU School of Law Program on Corporate Compliance and Enforcement Conference on Achieving Effective Compliance (October 12, 2018). <https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-nyu-school-law-program>. See also Memorandum from Brian A. Benczkowski re Selection of Monitors in Criminal Division Matters (October 11, 2018). <https://www.justice.gov/criminal-fraud/file/1100366/download>.

²⁷ Resource Guide at p. 55.

²⁸ Such factors include: (1) self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top; (2) self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins, and consequences of the misconduct, and promptly, completely, and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations; (3) remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedure to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and (4) cooperation with law enforcement authorities, including the providing SEC staff with all information relevant to the underlying violations and the company’s remedial efforts. *Id.*

deferred prosecution agreements (“DPA”), non-prosecution agreements (“NPA”),²⁹ and, in the case of the DoJ, declinations with disgorgement under the CEP.³⁰

C4I supports the policies in place by the enforcement agencies, which we believe are beneficial for the below reasons.

First, these guidance documents and policy statements enhance the transparency, predictability and consistency of the U.S. FCPA enforcement program, while still retaining discretion to address the needs of the individual case. In our view, they reflect a maturing enforcement regime that, based on experience, is better able to set priorities and provide guidance to affected communities, and to ensure outcomes that are consistent with the rule of law.

Second, through crediting a company’s timely voluntary self-disclosure and cooperation in determining whether to grant a declination or pursue the various settlement options discussed above, the enforcement agencies encourage companies to be forthright about the nature and scope of any violations, a major mechanism for instigating

²⁹ In a **plea agreement**, the defendant generally admits guilt, and is convicted of the charged crimes when the plea agreement is presented to and accepted by a court. The plea agreement may jointly recommend a sentence or fine, jointly recommend an analysis under the U.S. Sentencing Guidelines, or leave such items open for argument at the time of sentencing. Under a **DPA**, the DoJ files a charging document with the court, but simultaneously requests that the prosecution be deferred for the purpose of allowing the company to demonstrate its good conduct. DPAs generally require a defendant to agree to pay a monetary penalty, waive the statute of limitations, cooperate with the Government, admit the relevant facts, and enter into certain compliance and remediation commitments, potentially including a corporate compliance monitor. If the company successfully completes the term of the agreement, DOJ will then move to dismiss the filed charges. Under a **NPA**, the DoJ maintains the right to file charges but refrains from doing so to allow the company to demonstrate good conduct during the term of the agreement. Although a NPA is not filed with a court, NPAs regarding FCPA-related offenses are made available to the public through the DoJ’s website. Similar to a DPA, a NPA requires a waiver of the statute of limitations, ongoing cooperation, admission to the material facts, compliance and remediation commitments, and payment of monetary penalties. Upon completion of the NPA obligations, the DoJ does not move forward with filing criminal charges. *Id.*

³⁰ C4I notes that, with respect to **disgorgement**, U.S. Supreme Court precedent may erode the ability of the SEC to require that individuals or entities who violate the FCPA pay back, with interest, any ill-gotten gains. In 2017, the Supreme Court ruled in *Kokesh v. Securities and Exchange Commission* that disgorgement in SEC enforcement actions operates as a penalty, and as a result is subject to the federal five-year statute of limitations. 137 S. Ct. 1635 (2017). The *Kokesh* decision immediately reduced the SEC’s ability to seek disgorgement of illicit gains which accrued outside the five-year period. This term, the Supreme Court will rule in *Liu v. Securities and Exchange Commission* whether the SEC is able to obtain disgorgement at all in civil enforcement actions. While an adverse ruling would not affect the availability of disgorgement in administrative proceedings, given specific statutory provisions, the United States may need to provide the SEC with additional legal authority to ensure that it has a full range of options to prevent bribe payers from reaping the benefits of their conduct.

enforcement actions. As recognized in the Phase 3 Report, “[a] significant number...of investigations result from voluntary self-reporting by companies.”³¹ Moreover, incentivizing companies to cooperate fully can spare the enforcement agencies the tremendous challenge of attempting to collect evidence from foreign countries, which can be time-consuming and futile and facilitate prosecution of other culpable parties, including individuals.³² Accordingly, C4I supports the crediting of companies’ timely voluntary self-disclosures and cooperation as enforcement policy tools for increasing the number of enforcement actions taken and lowering the barriers for taking such actions.

Third, through crediting a company’s timely and appropriate remediation in determining whether to grant a declination or pursue the various settlement options discussed above, the enforcement agencies encourage companies to analyze the underlying causes of the violation and implement compliance programs, which are critical in preventing repeat violations. In particular, the DoJ’s framework for assessing effective compliance programs incentivizes programs that are well-resourced, managed by experienced personnel, and that have some degree of independence over compliance functions.³³ C4I believes that a comprehensive enforcement regime should encourage companies to develop effective compliance programs. While the policies currently in place by the enforcement agencies incentivize them toward this end, ongoing assessment including further examination of cases of recidivism may be warranted to ensure that those incentives are working fully as intended.

Finally, the enforcement policies currently in place promote settlement of cases, an important aspect of the overall enforcement regime that allows limited enforcement resources to be leveraged. Between 1977 and the present, 92% of defendants settled with the SEC and 75% of defendants settled with the DOJ, representing an overwhelming majority of cases.³⁴ This outcome frees up the finite financial and time resources of the enforcement agencies to pursue additional cases, while leading

³¹ Phase 3 Report at p. 12.

³² *Id.* at p. 33.

³³ Justice Manual 9-47.120 - FCPA Corporate Enforcement Policy. <https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977>.

³⁴ Stanford Law School Foreign Corrupt Practices Act Clearinghouse, Key statistics from 1977 to Present. <http://fcpa.stanford.edu/statistics-keys.html>.

companies to remedy the sources of the violations at issue through, for example, adopting or improving compliance programs and disciplining wrongdoers. In this sense, the encouragement of settlement agreements allows the entire enforcement regime to be both efficient and thorough, an optimal result. It also facilitates international cooperation.

A. Balancing Between Corporate and Individual Enforcement Actions

An area of particular concern for C4I within the context of enforcement policy is the need to strike a proper balance between corporate and individual enforcement actions. C4I believes that, to truly deter wrongdoing, effective enforcement must be directed at both corporate and individual offenders. If enforcement actions are directed only at corporations, company officers and employees under pressure to meet performance targets will not face the same disincentives to refrain from unlawful conduct. Because corporations rely on individuals to design, implement, adhere to, and oversee controls, these individuals must be held to account.

Consistent with the above, C4I lauds recent steps by the enforcement agencies aimed at ramping up individual enforcement actions. In 2015, for instance, the DoJ issued a guidance memo highlighting the importance of holding individuals accountable in combating corporate misconduct.³⁵ According to the DoJ, such approach “deters future illegal activity, ... incentivizes changes in corporate behavior, ... ensures that the proper parties are held responsible for their actions, and ... promotes the public’s confidence in [the] justice system.”³⁶ More recently, the DoJ has specifically identified “[f]ocusing on individual wrongdoers [as] an important aspect of the Department’s FCPA program.”³⁷ And the trends on the number of individual versus corporate enforcement actions bear this out; in 2017, 2018, and 2019, the number of individual enforcement actions was either close to or above the number of corporate enforcement actions.³⁸

³⁵ Memorandum from Sally Yates re Individual Accountability for Corporate Wrongdoing (September 9, 2015). <https://www.justice.gov/archives/dag/file/769036/download>.

³⁶ *Id.*

³⁷ Deputy Attorney General Rod J. Rosenstein Delivers Remarks at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act (November 29, 2018). <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0>.

³⁸ 2017: 19 individual, 11 corporate. 2018: 13 individual, 16 corporate. 2019: 30 individual, 14 corporate.

One area of focus for the enforcement agencies moving forward should be to ensure that *high-level officials at large corporations* who have engaged in wrongdoing are prosecuted. According to a survey conducted by Stanford Law School, “the vast majority of individuals criminally charged with FCPA-related offenses in 2019 (85 percent) appear to be connected to small or privately held companies with no parallel DOJ enforcement actions or investigations, rather than to the large public companies that account for the most significant FCPA violations and fines.”³⁹ More can be done to target senior officials at large corporations for their wrongdoing, which, in C4I’s view, would significantly disincentivize unlawful behavior by these individuals. To that end, C4I highlights the enforcement actions against Jose Carlos Grubisich, the former CEO of Brazilian petrochemical company Braskem,⁴⁰ and Gordon Coburn, Steven E. Schwartz, and Sridhar Thiruvengadam, the President, Chief Legal Officer, and Chief Operating Officer, respectively, of Cognizant Technology Solutions,⁴¹ as reflecting the kind of enforcement activity aimed at senior large company officials that should be prioritized by the DoJ and SEC.

B. Preventing Political Interference in Sentencing

In closing this section on enforcement policy, C4I would like to raise one serious concern regarding political interference in sentencing decisions.

FCPA enforcement takes place within the context of the larger law enforcement system, criminal and civil, and depends on the rule of law. Maintenance of the legal order requires sound legal protections for defendants, competent prosecutors and judges independent of political and personal influence, and active enforcement of anti-corruption laws broadly, including those banning the use of public office for personal gain. For this reason, recent actions by the U.S. Administration that have created a perception of interference with normal law enforcement processes and tolerance for crimes such as bribery, corruption, and fraud, are a real concern for C4I.

³⁹ Stanford Law School Foreign Corrupt Practices Act Clearinghouse, 2019 FCPA Year in Review. <https://www.sullcrom.com/files/upload/2019-fcpa-year-in-review.pdf>.

⁴⁰ Former CEO of Braskem Indicted for His Role in Bribery Scheme (November 20, 2019). <https://www.justice.gov/usao-edny/pr/former-ceo-braskem-indicted-his-role-bribery-scheme>.

⁴¹ SEC Charges Cognizant and Two Former Executives With FCPA Violations (December 2019). <https://www.sec.gov/news/press-release/2019-12>. SEC Settles FCPA Charges Against Former Chief Operating Officer of Cognizant (September 13, 2019). <https://www.sec.gov/enforce/34-86963-s>.

For example, C4I is troubled by the political interference in the sentencing recommendations for Roger Stone, found guilty of obstructing the congressional investigation into Russian interference in the 2016 presidential election. Recently, DoJ leadership overruled the sentencing recommendation made by the senior prosecutors who had won Stone's conviction, leading all four Assistant U.S. Attorneys assigned to the case to resign. DoJ's conduct in this respect followed the President's tweets urging leniency for his friend, Mr. Stone. After Watergate, well-established norms respected by both political parties have limited White House involvement with law enforcement decisions and sentencing recommendations. Any interference, and even actions and statements that create the perception of interference, inevitably result in loss of public confidence in the rule of law.

Similarly, U.S. efforts to combat corruption at home and abroad were damaged by President Trump's decision to pardon or commute the sentences of a host of convicted white collar criminals convicted of crimes related to corruption and fraud. Although C4I supports the wise use of clemency, we are concerned when the careful deliberative process of considering pardons and commutations is supplanted by an overtly political process and when pardons and commutations disproportionately benefit those convicted of crimes such as bribery, corruption and fraud with political connections.

Excessive and politicized pardoning of officials convicted of corruption gives a license for bad behavior to many others and risks undercutting the deterrence to such behavior posed by the threat of prosecution or jail time. The United States, which fought hard for the adoption of the OECD Anti-Bribery Convention and the United Nations Convention against Corruption, should be keenly aware of this reality and do everything in its power to prevent these undesirable outcomes. Accordingly, C4I believes that the United States needs to reverse course on this issue. Enforcement of the highest standards of ethics and integrity in the U.S. Government generally is important to the continued leadership of the United States in combatting corruption and bribery internationally.

III. THE REVOLVING DOOR

As highlighted in the Phase 3 Report,⁴² the DoJ's Criminal Division and the SEC's Enforcement Division, through their respective FCPA Units, play lead roles with respect to the enforcement of the FCPA in the United States. The FCPA Unit in the Fraud Section of the DoJ Criminal Division is responsible for all criminal prosecutions and for civil proceedings against non-issuers under the FCPA. The FCPA Unit was formed to handle all prosecutions, opinion releases, interagency policy development, and public education. The Unit is led by a Deputy Chief and two Assistant Chiefs. The Enforcement Division of the SEC is responsible for civil enforcement of the FCPA with respect to issuers. The Enforcement Division sits under the Office of the Chairman and is led by two Co-Directors. A specialized FCPA Unit, which was established in 2010 to further enhance the Enforcement Division's enforcement of the FCPA, is led by a Lead Attorney.

Over the past several years – including under both the Obama and Trump Administrations – top attorneys in DOJ's Fraud Section and FCPA Unit and SEC's Enforcement Division and FCPA Unit have come from private sector backgrounds. In addition, several high-profile figures as well as staff attorneys within both of these enforcement agencies have departed for private sector firms.

C4I recognizes that a perception of a revolving door may give rise to concerns, for example, that prosecutors looking to make a name for themselves by bringing high-profile enforcement actions to facilitate an entry (or reentry) into private practice or a corporate position, which may be more lucrative than their government position, may be influenced in their prosecutorial decisions by that goal. Frequent personnel changes may also disrupt consistent enforcement policies and lead to the non-pursuit of cases that should be pursued.

While these concerns are legitimate, it is unclear whether the revolving door between the enforcement agencies and private sector firms has had an adverse impact on the level or nature of U.S. Government enforcement activity. Specifically, between 2016 and 2019, the number of FCPA-related enforcement actions fluctuated, but certainly did not

⁴² Phase 3 Report at pp. 13-15.

decline, despite the departure of some prominent individuals from the enforcement agencies during these years.⁴³ Similarly, between 2015 and 2019, the size of corporate fines levied for FCPA violations fluctuated, but with a clear upward trajectory over this period.⁴⁴ These data points reflect enforcement agencies that are engaged and active in their enforcement of U.S. anti-bribery laws. That being said, the number of publicly disclosed investigations seems to have declined in the past two years.⁴⁵

There are also significant benefits to both the enforcement agencies and private sector firms from the exchange of personnel. From the vantage point of the enforcement agencies, it is undoubtedly beneficial to have enforcement authorities with an understanding of corporate governance and international business operations.

For private sector firms, employing former enforcement agency personnel with deep knowledge of the law can lead to increased compliance, a benefit to the firm and Government alike. In addition, where non-compliance is identified, former enforcement agency personnel may be more likely to advocate for self-disclosure and/or cooperation with the Government, in light of their familiarity with the enforcement agencies and their personnel. This outcome is also beneficial to both the firm and the Government.

Although personnel exchange between the Government and private sector may lead to certain advantages, it is also important that some checks remain in place to prevent undue influence over enforcement actions. To that end, C4I believes that it is imperative that guidance from the DoJ's Professional Responsibility Advisory Office, which provides nationwide guidance about ethical responsibilities, is strictly adhered to. In addition, the Office of the Inspector General in the DoJ, which is a statutorily-created independent entity that investigates alleged violations of criminal and civil laws by DoJ employees and also audits and inspects DoJ programs, should be adequately supported.

⁴³ 2016: 61 actions (24 DOJ, 37 SEC). 2017: 33 actions (24 DOJ, 9 SEC). 2018: 33 actions (15 DOJ, 18 SEC). 2019: 50 actions (31 DOJ, 19 SEC).

⁴⁴ 2015: \$142.7 million. 2016: \$2,824,700,000. 2017: \$1,291,400,000. 2018: \$2,913,300,000. 2019: \$2,903,500,000.

⁴⁵ Stanford Law School Foreign Corrupt Practices Act Clearinghouse, DOJ and SEC Enforcement Actions per Year. <http://fcpa.stanford.edu/statistics-analytics.html>.

C4I also supports exploring certain changes within the DoJ to ensure that the FCPA Unit is perceived to act with complete integrity. First, the DoJ's FCPA Unit should consider imposing a one-year ban on former employees appearing before the agency as private sector counsel, akin to a similar rule in place for former employees of the SEC's FCPA Unit.⁴⁶ Such a restriction is common among financial regulatory bodies,⁴⁷ and would go a long way toward diminishing the appearance of a revolving door between the DoJ and private sector interests.

Second, salaries for attorneys in the DoJ's FCPA Unit should be reconsidered and potentially raised to close the gap with private sector remuneration and decrease the potency of financial incentives to leave the agency.

⁴⁶ Post-Employment Conflict of Interest Regulations; Exempted Senior Employee Positions. <https://www.govinfo.gov/content/pkg/FR-2014-01-02/pdf/2013-30668.pdf>.

⁴⁷ For example, in New York State, a two-year bar restricts the ability of former State employees, including those of the New York Department of Financial Services, to leverage their connections with their former agency by generally prohibiting them from engaging in efforts to influence a decision of their former agency or to gain information from the agency that is not generally available to the public. Public Officers Law § 73(8)(a)(i). <https://jcope.ny.gov/system/files/documents/2019/10/jcope-2019-ethics-guide-opt.pdf>.

IV. JUDICIAL REVIEW AND TRANSPARENCY

In the United States, the courts have a relatively limited role in the settlement of enforcement actions against corporate and individual defendants. Although the courts have no authority to exert influence on NPAs and declinations (since they are not filed with the court but, rather, maintained by the parties themselves), they are able to shape PAs and DPAs in certain ways. Because a PA entails a formal confession of guilt by the defendant before the court, the court has the authority to accept, reject, or modify the PA reached by the defendant and the Government. The courts also have the authority to review certain aspects of DPAs. In particular, the court may review the defendant's compliance with the provisions of the DPA following its term, and theoretically go so far as to opine as to whether the defendant complied with the DPA and charges should be dropped – potentially in conflict with DOJ's position on these same questions. In practice, however, the exercise of such judicial authority is not common.

As discussed above, the benefits of an enforcement regime that incentivizes settlement by parties is clear. Furthermore, the increased incidence of multi-jurisdictional cases makes it even more important that U.S. enforcement authorities have a degree of flexibility in approaching settlement. At the same time, C4I believes that the existence of judicial oversight serves as an important check on potential abuses of prosecutorial discretion. It is a question of striking the right balance. We are aware that other countries such as the U.K. have opted for a greater role of the judiciary in DPAs.

Although there is always a theoretical concern about abuse of prosecutorial discretion, there is no reason to believe, at least at this time, that this is a systemic problem with respect to FCPA enforcement in the United States or that increased involvement of the judiciary would fundamentally reduce such theoretical concerns. Moreover, the DoJ has taken steps to increase transparency with respect to PAs, NPAs, and DPAs and declinations with disgorgement, publishing these types of agreements on its website.⁴⁸ For PAs, sentencing memoranda are also available publicly (similar information for DPAs and NPAs are not available, since these cases are resolved by agreement and do not require the court to impose a sentence).⁴⁹

⁴⁸ Phase 3 Report at p. 34. (only NPAs with companies, not individuals, are made public).

⁴⁹ *Id.*

C4I is, however, of the view that additional transparency regarding the DoJ's and SEC's enforcement pipeline would contribute to the overall transparency and credibility of the U.S. government's FCPA enforcement program. Similar to the statistics published by the World Bank on an annual basis regarding the work of its Integrity Vice Presidency, we urge the DoJ and SEC to publish the following summary statistics on an annual basis:

- Number of complaints received regarding potential FCPA-related violations;
- Number of opened investigations;
- Number of cases closed after a preliminary investigation;
- Number of cases closed without enforcement action (whether in the form of a PA, DPA, NPA, or declination with disgorgement) after a full investigation;
- Pipeline at the beginning and at the end of the year;
- Number of cases for which informal or formal assistance of a foreign authority was sought, including the name of the foreign authority to which the case was referred;
- Number of cases in which prosecution was declined in favor of the interests of a foreign authority; and
- Number of investigations and declinations for recidivists.

V. THE U.S. APPROACH TO SMALL FACILITATION PAYMENTS

As the OECD is aware, since the statute's adoption in 1977, the FCPA's anti-bribery provisions have included a limited exception for facilitation payments. Currently, the FCPA defines such payments as those aimed at securing performance of a "routine governmental action" by a foreign official, political party, or party official.⁵⁰ The Act defines "routine governmental action" as an action which is "ordinarily and commonly performed by a foreign official in" (i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country; (ii) processing governmental papers, such as visas and work orders; (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country; (iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or (v) actions of a similar nature.⁵¹ The Act clarifies that "routine governmental action" does *not* include "any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party."⁵²

Notably, this exception does *not* eliminate the need for issuers subject to SEC jurisdiction to record such payments accurately in the company's books and records under the FCPA's accounting provisions. That is, even if a payment fits comfortably within the anti-bribery prohibitions' narrow exception, it is not subject to a parallel exception in the accounting provisions.

The Phase 3 Report noted the desire of private sector and civil society representatives for further guidance from the U.S. Government concerning the scope of the exception for facilitation payments. Based on these observations, the evaluators recommended

⁵⁰ 15 U.S.C. § 78dd-2(b). See also 15 U.S.C. § 78dd-1(b) and 15 U.S.C. § 78dd-3(b). The current definition was added in 1988 by the Trade and Competitiveness Act, P.L. 100-418.

⁵¹ 15 U.S.C. § 78dd-2(h)(4)(A).

⁵² 15 U.S.C. § 78dd-2(h)(4)(B).

that the United States, in its periodic review of facilitation payments pursuant to the 2009 Anti-Bribery Recommendation, “consider the views of the private sector and civil society, particularly on ways of clarifying the ‘grey’ areas identified by them, including what kinds of decision-making are discretionary and non-discretionary.”⁵³ The evaluators also commended the United States for diligently pursuing books and records violations of the FCPA – including facilitation payments – and encouraged the United States to raise awareness of this effort.⁵⁴

While recognizing that an increasing number of jurisdictions around the world do not permit facilitating payments, C4I believes that the exception remains a reasonable policy decision within the FCPA’s overall statutory scheme, particularly given U.S. enforcement. In particular, and consistent with the private sector observations of “continued high level[s] of demand for facilitation payments by foreign officials” noted in the Phase 3 Report,⁵⁵ C4I believes that this narrow exception permits U.S. enforcement authorities, and particularly the DoJ, to focus resources on cases of “grand” corruption and other cases that involve the subversion of discretionary official action.

In our view, the boundaries of this narrow exception are sufficiently clear, and becoming clearer. Since the issuance of the Phase 3 Report, the DoJ and SEC further clarified the contours of the facilitation payments exception in “A Resource Guide to the U.S. Foreign Corrupt Practices Act” (November 14, 2012) (“Resource Guide”). The Resource Guide makes clear that size alone does not dictate whether a payment falls within the exception and that “like the FCPA’s anti-bribery provisions more generally, the facilitating payments exception focuses on the purpose of the payment rather than its value.”⁵⁶ The real-world and hypothetical examples provided in the Resource Guide effectively drive this point home.

The facilitation payments exception has also been clarified by the courts. For instance, in *S.E.C. v. Jackson*, the United States District Court for the Southern District of Texas stated:

⁵³ Phase 3 Report at p. 25.

⁵⁴ *Id.* at p. 52.

⁵⁵ *Id.* at p. 25.

⁵⁶ Resource Guide at p. 25.

The “facilitating” payments exception was intended to provide a “very limited exception[] to the kinds of bribes to which the FCPA does not apply.” The exception allows for payments to foreign officials the purpose of which is to “expedite or secure the performance of a routine government action,” 15 U.S.C. § 78dd– 1(b), which refers to a “very narrow category[y] of largely non-discretionary, ministerial activities performed by mid- or low-level foreign functionaries.”⁵⁷

In *United States v. Duperval*, the Eleventh Circuit Court of Appeals provided that “{t}he text of the statute refers to the government providing a service to a person or business, not to the government administering [of] contracts... ”⁵⁸

Such clarifications by the U.S. enforcement agencies and the courts have served to better inform private sector actors as to the boundaries of the facilitation payments exception, consistent with the recommendations of the Phase 3 evaluators.

In addition, and as noted earlier, C4I believes that the focus of anti-bribery enforcement should continue to be grand corruption and other cases of discretionary official action, not relatively minor “grease” payments to facilitate routine, non-discretionary governmental action. Removing the latter from the ambit of unlawful payments frees up time and resources for the enforcement agencies to focus on the former. And, with respect to the accounting provisions of the FCPA, the enforcement agencies have taken action against companies for the misreporting of facilitation payments, as observed in the Phase 3 Report,⁵⁹ as part of their continued vigorous enforcement of those provisions.

Finally, given the adoption of statutes such as the U.K. Bribery Act that do not contain such an exception, multinational companies are eliminating the exception in their own policies. Accordingly, this exception today does not represent in our view a material

⁵⁷ S.E.C. v. Jackson, 908 F. Supp. 2d 834, 857-58 (S.D. Tex. 2012) (internal citations omitted).

⁵⁸ *United States v. Duperval*, 777 F.3d 1324, 1335 (11th Cir. 2015) (rejecting the argument that the administration of a multi-million dollar telecommunications contract fell within the facilitation payments exception).

⁵⁹ Phase 3 Report at p. 25, citing Lucent, UTStarcom, Natco, Veraz Networks, and Avery Dennison. The SEC’s action against Noble Corporation, which was subsequent to the Phase 3 Report, included similar claims, i.e., that the company lacked internal controls adequate to prevent the recording of payments as facilitating payments that were not facilitating payments within the meaning of the FCPA.

loophole. U.S. enforcement of the FCPA continues to be robust, and in our view enforcement policy has rightly prioritized grand corruption and individual liability, while not ignoring smaller-scale corruption in areas such as hiring, charitable contributions, gifts, entertainment, hospitality, and the like. Eliminating the exception would require amending the FCPA, which in our view is not warranted at this time.

Conclusion

The United States' continued robust level of FCPA enforcement, and its efforts to hold companies as well as individuals to account, suggests that at a fundamental level, the FCPA enforcement regime is working. Having said that, C4I believes that the overall credibility of the FCPA enforcement effort could be strengthened by additional transparency from the DoJ and SEC with respect to their enforcement pipelines, holding high-level executives of major companies accountable, taking steps to reduce the revolving door between Government and the private sector, preventing political interference in sentencing, and taking steps to enhance the tools available to the enforcement agencies to pursue demand side bribery. These items, should in our view be the priorities for improvement in the FCPA enforcement regime in the near term.



Coalition for Integrity

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