



Kobre & Kim's Government Enforcement Defense Contacts



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Non-U.S. Companies Beware: New U.S. DOJ Guidelines May Apply

The U.S. Department of Justice released new guidelines that signal their continued aggressive prosecution of individuals and companies outside U.S. borders. Our global Government Enforcement Defense team explains the implications.

The U.S. Department of Justice (DOJ) recently announced updated guidelines that signal their aggressive prosecution of individuals and companies beyond American borders. Targeted companies must find a team located in their jurisdiction that can navigate the U.S. action and the resulting intersection of U.S. and local laws.

How Will the Guidelines Potentially Affect Me?

The guidelines have three major implications for overseas individuals and companies:

- 1. The DOJ might go at it alone.** If the DOJ is not satisfied that another government's investigation will be effective, they may go ahead with their own prosecution – meaning many will be prosecuted by the DOJ no matter which country they are in.
- 2. Cooperation must now be quick.** Companies must prove if data privacy laws, blocking statutes or other restrictions impede speedy document production and propose alternate means. They also must identify all available legal bases to preserve, collect and produce evidence expeditiously.
- 3. The target's full record is now under the microscope.** Targeted companies are expected to produce a list and summary of all criminal resolutions within the past ten years, all civil or regulatory resolutions within the past five years, and any known pending investigations by global regulators.

DOJ defined "cooperation" requires admission of wrongdoing and, as such, may not be a viable option. In addition, authorities from countries outside the U.S. will often open

independent investigations triggered by the U.S. authorities' interest in person or entity. A team of international-based former U.S. government lawyers would be best positioned to coordinate responses in multiple countries and prevent the situation from spiraling out of control.

About Kobre & Kim's Government Enforcement Defense Team

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct.

This content provides information on legal issues and developments of interest to our clients and friends and should not be construed as legal advice on any matter, specific facts or circumstances. The distribution of our content is not intended to create, and receipt of it does not constitute, an attorney-client relationship.

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Our team of independent advocates in cross-border government enforcement investigations and actions:

- includes almost twenty former U.S. government lawyers based globally;
- has served as lead counsel in prominent enforcement actions including those involving market manipulation, bribery and corruption, antitrust and competition, economic sanctions, asset forfeiture, money laundering, extradition, fraud and other misconduct; and
- are able to either advocate directly or to work cooperatively with local counsel, in jurisdictions in the U.S., UK, EMEA, Asia, Latin America and key offshore financial centers.