

Are Chinese Companies Being Targeted for Anti-Corruption Enforcement?

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Anti-corruption/FCPA

Last week, the U.S. Department of Justice announced a new “China Initiative.” According to the [press release](#), the Initiative “reflects the Department’s strategic priority of countering Chinese national security threats and reinforces the President’s overall national security strategy.”

The Initiative lists ten goals, most of which relate to combating economic espionage, guarding against Chinese influence over U.S. institutions, and better coordination of enforcement resources. One of the ten goals is to “[i]dentify Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses.”

The announcement does not provide further details, and it is unclear whether this goal reflects an intentional shift for the DOJ (and the Fraud Section specifically) to prioritize and devote additional resources to FCPA cases involving Chinese companies, or is simply a reflection of the broader hardening of tone in U.S. government strategy vis-à-vis China. (No one with whom I have spoken can recall another situation where the DOJ has announced that it would target companies headquartered in a specific country for FCPA enforcement.)

Also, the goal references FCPA cases involving Chinese companies “that compete with American businesses,” which suggests that DOJ may prioritize cases where U.S. companies are disadvantaged by corrupt conduct by Chinese companies.

China has certainly been fertile ground for FCPA enforcement actions -- 31 percent of all corporate FCPA cases from 2011 to the present have involved improper conduct in part or in full in China. Nearly all of those cases, however, involve multinational companies with business operations in China rather than companies based in China. We are not aware of any settled FCPA enforcement actions involving improper conduct by Chinese companies outside of China.

It is not uncommon to see news reports alleging that Chinese companies operating outside of China engage in bribery and corruption of government officials. The Chinese government has recently plowed significant financial and public relations resources into promoting the Belt and Road Initiative, much of which involves infrastructure projects led by Chinese companies in developing regions of Africa, Asia, and Europe.

One historical hurdle for bringing FCPA cases against Chinese companies has been jurisdiction -- relatively few Chinese companies are U.S. “issuers,” and the conduct as alleged in public reports often appears to have no obvious connection to the United States.

Time will tell whether the DOJ’s new China Initiative will result in a significant increase in enforcement against China-headquartered companies.

This summary first appeared as a [post](#) on the FCPA Blog.

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