



SPEECH

Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime

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Thank you so much, Ray. It's great to be here. It's nice to see so many friends in the audience and to be back with you, although actually with you this time and not beaming in.

I'm really pleased my friend Leslie Caldwell has agreed to moderate a little discussion afterwards.

It's a pleasure to be here to talk to you about an enduring Department of Justice priority: advancing the fight against corporate crime.

Corporate crime, as we all know, jeopardizes jobs, savings, our economic security, and increasingly, our national security.

Since returning to the department, the Attorney General and I have prioritized battling corporate crime in order to uphold the rule of law, to strengthen financial markets, and to reassure the public that no person and no company is above the law.

Now, as Ray mentioned, two years ago in October of 2021, I directed some immediate policy changes to invigorate corporate criminal enforcement, and I did so based on a few fundamental principles: preventing misconduct before it happens; holding individual wrongdoers accountable; and deterring and punishing recidivism.

Now, at the same time, we launched the Corporate Crime Advisory Group to recommend more advances, based on input, and this is important, input from outside as well as inside the department.

And based on that input, last fall I announced department-wide policy changes focused on promoting cultures of corporate compliance, while also ensuring consistency and predictability in the way the government treats corporate crime.

Our goal is to empower companies to do the right thing, by investing in compliance, in culture and in good corporate citizenship — while at the same time empowering our prosecutors to hold accountable those who don't follow the law.

Now, many of the policies I announced last September required action across the Department of Justice — from the Criminal Division to the divisions that concentrate on tax and antitrust and environmental and national security crimes, to each of the 94 U.S. Attorneys' Offices.

And today, I'll update you on our progress we've made, including our work to cement a firm foundation for corporate criminal enforcement and reward investments in corporate compliance.

And I'll also address the additional resources we are bringing to bear to confront emerging risks.

Because in today's complex and uncertain geopolitical — very uncertain quite frankly — geopolitical environment, corporate crime and national security are overlapping to a degree never seen before, and the department is retooling to meet that challenge.

Our National Security Division will be elevating its attention to corporate crime through an infusion of personnel and expertise.

And we're doubling down on the successful strategies we have deployed to attack cyber and crypto crime, to harness all tools across government to pursue prevention, deterrence and accountability.

Inspiring a Culture of Compliance

Now, last September, I emphasized the department's commitment to finding the right incentives to promote and support a culture of corporate compliance.

And I noted two new areas of particular focus: a cross-department approach to promoting voluntary self-disclosure and how compensation structures can foster responsible corporate behavior.

We want companies to step up and own up when they discover misconduct and to use compensation systems to align their executives' financial interests with the company's interest in good corporate citizenship.

And since then, the department has been doing the hard work of turning principles into policy.

Voluntary Self-Disclosure Programs

Now, with respect to voluntary self-disclosure, I am pleased to report that, for the first time, every U.S. Attorney's Office now has, and every component I should say, that prosecutes corporate crime, now has in place an operative, predictable and transparent voluntary self-disclosure program.

These policies share a common principle: absent aggravating factors, no department component will seek a guilty plea where a company has voluntarily self-disclosed, cooperated and remediated the misconduct.

Now, we recognize that companies and counsel rely on the department to apply its policies transparently and consistently throughout the country.

By adopting one policy for all U.S. Attorneys' Offices, we are eliminating geographic disparities and uncertainties; the same policy applies whether a company voluntarily self-discloses to the U.S. Attorney's Office in Alaska or right here in Miami.

Now, these are not rigid, cookie-cutter policies. Each component thoughtfully tailored its policy to its specific mission.

Potential aggravating factors are different for the National Security Division than they are for the Environment and Natural Resources Division.

And even the Criminal Division — which pioneered this concept and already had a model policy from which components drew — the Criminal Division revised its policy to provide clearer assurances and increased incentives for companies that come forward and self-report.

Let me be very very clear. I want every general counsel, every executive and board member to take this message to heart: where your company discovers criminal misconduct, the pathway to the best resolution will involve prompt voluntary self-disclosure to the Department of Justice.

And the department is practicing what it preaches.

For example, the Criminal Division recently entered into a deferred prosecution agreement (DPA) with ABB Limited — a Swiss multinational engineering company — and this was a DPA for FCPA crimes that it attempted to voluntarily self-disclose to the government.

Now, this was not the company's first DPA, and the department carefully scrutinizes this type of recidivism.

But weighing the company's efforts disclose, its extensive cooperation, its compliance program overhaul and other key considerations — like facilitating overseas employee interviews and engaging in extensive remediation — the Criminal Division concluded — and we agreed — that a DPA was appropriate.

What this shows is that even a company with a significant history of misconduct has a powerful incentive to make a timely self-disclosure; had ABB not promptly come forward, the result would have been drastically different.

Promoting Compliance through Compensation and Clawback Programs

The second new policy to drive compliance-promoting behavior involves innovative approaches to compensation and the use of clawbacks.

Now, as of September, I announced that the department would examine corporate compensation programs, to shift the burden of corporate malfeasance away from uninvolved shareholders onto those more directly responsible.

Companies should ensure that executives and employees are personally invested in promoting compliance. And nothing grabs attention or demands personal investment like having skin in the game, through direct and tangible financial incentives.

So, at my direction, the Criminal Division studied this issue. I asked them to talk to practitioners, to consult with regulators and to develop guidance, guidance on how to reward corporations with compliance-promoting compensation programs.

As Assistant Attorney General Kenneth Polite will talk about in greater detail tomorrow, we are now ready to launch the department's first-ever Pilot Program on Compensation Incentives and Clawbacks.

Now, the program has two parts.

First, every corporate resolution involving the Criminal Division will now include a requirement that the resolving company develop compliance-promoting criteria within its compensation and bonus system.

This is something we have already debuted in recent Criminal Division cases, with criteria that are tailored to fit the company's existing compensation program.

For example, as part of its plea agreement in December and in addition to forfeiting \$2 billion, Danske, the largest bank in Denmark, agreed to revise its performance review and bonus system to include criteria related to compliance.

So now, Danske executives with a failing score for compliance will also fail to secure a bonus.

Second, under the pilot program, the Criminal Division will provide fine reductions to companies who seek to claw back compensation from corporate wrongdoers.

At the outset of a criminal resolution, the resolving company will pay the applicable fine, minus a reserved credit equaling the amount of compensation the company is attempting to claw back from culpable executives and employees.

If the company succeeds and recoups compensation from a responsible employee, the company gets to keep that clawback money — and also doesn't have to pay the amount it recovered.

And because we heard from stakeholders about how challenging and how expensive the pursuit of clawbacks can be, the pilot program will also ensure that those who pursue clawbacks in good faith but are unsuccessful are still eligible to receive a fine reduction.

Our goal is simple: to shift the burden of corporate wrongdoing away from shareholders, who frequently play no role in the misconduct, onto those directly responsible.

We intend this program to encourage companies who do not already factor compliance into compensation to retool their programs and get ahead of the curve.

Tomorrow, we will release this new policy, and Assistant Attorney General Polite will provide more details about the program.

We believe the best way to combat corporate crime is to prevent it, or barring that, to surface it and address it head on.

Now, these policies empower general counsels and compliance officers to make the case to company management, to make the case in the boardroom that investment in a robust compliance program, including a forward-leaning compensation system, is money well spent.

Resource Commitments to Corporate Criminal Enforcement

Now, since I returned to the department, I've also looked for ways to expand the resources available to the department's prosecutors to address the evolution of corporate crime. And last year, we stood up the National Cryptocurrency Enforcement Team (NCET) and the FBI's Virtual Asset Unit (VAU).

Now, these investments have already been paying off — whether you look at the over \$5 billion in cryptocurrency recovered last year or the prosecutions we have brought against dozens of crypto criminals.

Today, I am pleased to announce a similar surge of resources to address a troubling trend: the intersection of corporate crime and national security.

Companies are on the front lines of today's geopolitical and national security challenges. Increasingly, corporate criminal investigations carry profound national security implications.

Last October, the department secured the first-ever corporate guilty plea to material support for terrorism. This was from multinational construction company LaFarge, S.A., for a scheme in which executives brazenly paid millions to terrorist groups like ISIS, in exchange for permission to operate a cement plant in Syria. LaFarge was sentenced to pay financial penalties of more than \$750 million.

And last week, just last week, the world marked one year since Russia's unprovoked invasion of Ukraine. That invasion sparked a global response from governments and companies alike, and it elevated the importance of sanctions and export control enforcement.

What was once a technical area of concern for select businesses should now be at the top of every company's risk compliance chart.

As I've said before, in today's world, sanctions are the new FCPA. And across the department and indeed across the globe, we are handling corporate investigations that involve sanctions evasion — in industries as varied as transportation, fin tech, banking, defense and agriculture.

And to address the increasing intersection of corporate crime and national security, the department is today announcing significant restructuring and resource commitments within the National Security Division. That division, of course, is overseen by Assistant Attorney General Matt Olsen.

We will add more than 25 new prosecutors who will investigate and prosecute sanctions evasion, export control violations and similar economic crimes.

Now, those new hires will include the National Security Division's first-ever Chief Counsel for Corporate Enforcement.

And starting today, the division will issue joint advisories with the Commerce and Treasury Departments — akin to the FCPA guidance we have for years published jointly with the SEC — to inform the private sector about enforcement trends and to convey the department's expectations as to national security-related compliance.

As Matt Olsen will talk about in more detail a little bit later today, these actions demonstrate the breadth of the department's commitment to combatting corporate crime, particularly where it places our collective security at risk.

As the National Security Division expands its capacity to investigate and prosecute corporate sanctions violations, they will work closely with U.S. Attorneys' Offices and the Criminal Division to apply enforcement strategies that have proven their worth in other areas of the department.

And I am pleased to announce that we will also be making a substantial investment in the Bank Integrity Unit (BIU) in the Criminal Division's Money Laundering and Asset Recovery Section.

As many of you know, BIU has a significant track record of prosecuting global financial institutions for sanctions violations, and these additional resources will allow it to build upon that record and be a strong partner to NSD.

Finally, stay tuned for some significant announcements in some significant cases in the coming weeks that implicate this very troubling trend.

Accountability

Let me close on what will always remain the most important priority in corporate enforcement: individual accountability.

Over the last two years, that focus on individual accountability has paid off.

Recent charges – like those against Sam Bankman-Fried and Carlos Watson – and convictions – like those of Elizabeth Holmes and Sunny Balwani – demonstrate the department's resolve to take on the most challenging cases.

But even more importantly, we have shown that we are serious about taking individual wrongdoers to trial. The Criminal Division's Fraud Section, for example, secured more individual convictions at trial last year than in any of the previous five years.

So, our message is clear: the department will zealously pursue corporate crime in any industry, and we will hold wrongdoers accountable, no matter how prominent or powerful they are.

And to that end, I will close with this, an ounce of prevention is worth a pound of cure. Investing now in a robust compliance program is good for business, and it is good for our collective economic and national security.

Thank you so much for having me today. I look forward to the discussion.

Speaker

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Component

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