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The FCPA and the China Initiative

In November 2018, then Attorney General Jeff Sessions announced the so-called China Initiative. One of the stated goals of the Initiative is to “[i]dentify Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses[.]” According to a fact sheet on the Initiative, it reflects the DOJ’s “strategic priority of countering Chinese national security threats and reinforces the President’s overall national security strategy.”

This language is surprising as the DOJ has historically said that it does not target particular industries or countries, Hughes Hubbard partner Laura Perkins told me, noting that this may indicate that the DOJ is shifting its resources.

At ACI’s FCPA Conference later in November, Daniel Kahn, head of the FCPA Unit at the DOJ, was asked about the Initiative. His responses were carefully crafted, including a disclaimer that “geopolitics is not my forte.” He noted that leveling the playing field for honest business has been the goal of the FCPA since its inception in 1977 but did not comment on how the directive to look specifically at Chinese companies might change how the FCPA Unit prosecutes cases. “All I can tell you is that I think the FCPA Unit is going in the right direction,” Kahn said. “We continue to follow the evidence and continue to bring righteous cases and we are going to continue to do that.”

For more on what was said at the conference about this and other issues the DOJ faces when working on international corruption cases, see my article on the [benefits and pitfalls](#) of international cooperation. Considering that China has recently enacted a blocking statute making it even more difficult for companies to get data and documents out of the country, you might also want to brush up on [data privacy](#) and [cybersecurity](#) in China, as well as how the country’s [state secrets](#) laws can make internal investigations particularly challenging.

Have you dealt with challenges while investigating in China? If so, we would love to hear what they were and how you addressed them.

Warmly,

Megan Zwiebel
Senior Editor