

This is your Release #4 (November 2018)

Deskbook on Internal Investigations, Corporate Compliance, and White Collar Issues

by Arnold & Porter Kaye Scholer LLP

This Deskbook, authored by Arnold & Porter Kaye Scholer LLP's White Collar Defense Practice Group, presents comprehensive coverage of the regulatory and criminal issues that can arise in a corporate setting.

Highlights of this release include:

Legal fees and costs for internal investigations: Resolving a split among the circuits in favor of the minority rule, the Supreme Court in *Lagos v. United States* held that legal fees and costs associated with an internal investigation conducted by a corporation are not recoverable, even when the internal investigation is prompted by a government investigation. The Court left open the question of whether such costs are recoverable when the internal investigation is conducted at the request of the government. (**Chapter 1, Internal Investigation of Suspected Wrongdoing by Corporate Employees, section 1:3.2, Recovering Expenses Incurred During Internal Investigations**)

Privacy of cell phone location data: In *Carpenter v. United States*, the Supreme Court held that the federal government must obtain a warrant to access historical cell phone location records. Reversing the holding of the Sixth Circuit, the Court noted the “unique nature of cell phone location records” given that “a phone goes wherever its owner goes,” and concluded that allowing government access to cell-site records contravenes an individual's expectation of privacy. (**Chapter 3, Responding to Searches and Seizures, section 3:2.1[E], Exceptions Regarding IP Addresses and Cell Phone Locators**)

Out-of-district warrants: The Supreme Court adopted an amendment to Federal Rule of Criminal Procedure 41(b), expanding the scope of venue in which a warrant can be issued for the search of a computer.

(continued on reverse)

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The new rule authorizes warrants for the search and seizure of documents from computers located outside the judge's district if the location of the information "has been concealed through technological means," or if the crime involves damage to governmental, bank, or other protected computers that "have been damaged without authorization and are located in five or more districts." (**Chapter 3, Responding to Searches and Seizures, section 3:2.3, Out-of-District/-Country Warrants**)

DOJ leniency policies for FCPA and criminal export control and sanctions violations: The DOJ Criminal Division has formally adopted key portions of its one-year pilot program offering companies that self-report FCPA violations the opportunity to receive substantially reduced penalties or perhaps avoid criminal prosecution. Under the new policy, there is a presumption in favor of non-prosecution when companies self-report, cooperate, and remediate. Aggravating circumstances may overcome the presumption, but in such cases, companies still may receive a reduced fine. As well, the DOJ National Security Division issued guidance that a company that voluntarily self-discloses criminal violations of U.S. export control and sanctions laws, fully cooperates with the government's investigation, and appropriately remediates, may be eligible for a significantly reduced penalty, including possibly a non-prosecution agreement, a reduced period of supervised compliance, a reduced fine and forfeiture, and no requirement for a monitor. (**Chapter 8, Leniency Programs and Policies, new section 8:6, Criminal Division Leniency Policy for FCPA Violations, and new section 8:7, Leniency Policy for Criminal Export Control and Sanctions Violations**)

DOJ Policy on Federal Adoption: Under new Policy Directive 17-1, the DOJ has reinstated the use of "federal adoption," a policy allowing the federal government to take assets seized by state and local law enforcement where the conduct giving rise to the asset seizure under state law also violates federal law. (**Chapter 13, Asset Forfeiture and Debarment, new section 13:1.3[E][1], Department of Justice Policy on Federal Adoption**)

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FILING INSTRUCTIONS

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REMOVE OLD PAGES NUMBERED:

- Title page to 1-40
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