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DOJ Issues New Guidance on Crediting Penalties in Coordinated Resolutions

On June 5, 2025, the Head of the Criminal Division of the Department of Justice (“DOJ”), Matthew R. Galeotti, issued a memorandum providing guidance to Criminal Division prosecutors on corporate resolutions involving parallel criminal, civil, regulatory, and administrative proceedings by domestic and foreign authorities (the “Memorandum”).¹ The Memorandum directs Criminal Division prosecutors to coordinate resolutions with domestic and foreign authorities and to prioritize compensation to victims when evaluating whether to credit penalties paid to other authorities. In effect, the Memorandum may limit the circumstances where the Criminal Division will credit penalties paid to other authorities.²

Coordination

The Memorandum places the onus on companies under investigation to seek coordinated resolutions. It provides that such companies must (i) “inform the Criminal Division about those other investigations and potential resolutions” and (ii) affirmatively “request a coordinated resolution” as “early as possible” in the investigative process. The Memorandum warns that “prosecutors will not credit payments to other authorities when a company does not meaningfully attempt to coordinate resolutions.”

Credit

The Memorandum recognizes that corporate criminal investigations (and resolutions) often involve multiple DOJ components and federal, state, local, and foreign agencies. The Memorandum instructs Criminal Division prosecutors who are resolving a corporate matter involving investigations by multiple authorities to avoid duplicative penalties by “crediting” or “apportioning” payments made to other authorities in parallel resolutions. This is consistent with the DOJ’s Justice Manual, which provides that federal prosecutors should “consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities” in a coordinated resolution and provides a number of factors for prosecutors to consider.³

¹ Memorandum from the Head of the Crim. Div., *Guidance on Coordinating Corporate Resolution Penalties in Parallel Criminal, Civil, Regulatory, and Administrative Proceedings*, U.S. Dep’t of Just. (June 5, 2025), available [here](#).

² The Criminal Division regularly undertakes corporate enforcement actions that are coordinated with other domestic and foreign authorities. This includes enforcement actions relating to money laundering (through the Money Laundering and Asset Recovery Section), Foreign Corrupt Practices Act (“FCPA”) (through the Fraud Section and its FCPA Unit), healthcare fraud (through the Fraud Section and its Health Care Fraud Unit) and securities fraud (through the Fraud Section and its Market Integrity and Major Fraud Unit). The Criminal Division’s prosecutors regularly bring coordinated enforcement actions with foreign authorities, federal and state banking regulators, the SEC, the CFTC and OFAC, among others.

³ Justice Manual, “Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings” (1-12.000) (new May 2018), available [here](#). These factors “may include, for instance, the egregiousness of a company’s misconduct; statutory mandates regarding penalties, fines, and/or forfeitures; the risk of unwarranted delay in achieving a final resolution; and the adequacy and timeliness of a company’s disclosures and its cooperation with the Department, separate from any such disclosures and cooperation with other relevant enforcement authorities.” This provision of the Justice Manual was added in 2018

While the Memorandum thus continues DOJ's anti-"piling on" policy, it also provides that the primary factor for prosecutors to consider when evaluating the degree to which companies will receive credit for other penalties is victim compensation. The Memorandum instructs prosecutors to consider how the monetary penalties would be used by each authority and how the penalties can be apportioned to maximize recovery for victims of crime. Practically, this may have the impact of reducing the credit that the Criminal Division provides companies for resolutions with other authorities where those authorities have less developed victim compensation mechanisms. At the same time, this may increase the overall compensation of victims through restitution orders, forfeiture orders, remission, and increased contributions to the Crime Victims' Fund.

The Memorandum provides:

Domestic Crediting: In considering whether to offer credit in resolutions with domestic agencies (both at the federal and state levels), Criminal Division prosecutors "should prioritize recoveries for and assistance to victims of crime."⁴ The Memorandum requires prosecutors to conduct this prioritization in accordance with two principles:

- *Victims of the Underlying Crimes:* Prosecutors should prioritize compensation to victims of the underlying crimes. As a result, prosecutors should not reduce the amount of restitution (orders that compensate victims of the crimes) or "forfeiture that could be used for remission to compensate those victims" through crediting.
- *Victims Generally:* Prosecutors should not credit penalties imposed by other domestic authorities that would otherwise be used to support victims generally, including through the Crime Victims' Fund, unless the other authorities "use their penalties to similarly support victims."

This focus on compensation to victims means that if a penalty "will be deposited in a general state treasury fund or the general fund of the Treasury," then the Criminal Division would not provide credit for that payment unless the funds paid to DOJ "would not be available to compensate victims of the underlying crime with compensable losses."

Foreign Crediting: The Memorandum first explains that, in deciding whether to pursue an investigation and corporate prosecution that is also being pursued by foreign authorities, prosecutors "should determine as early as possible if a foreign authority has a parallel investigation into the same entities." It then recognizes that "appropriate crediting and apportioning of payments" made as part of a coordinated resolution "not only enhances the global fight against transnational crime but it can also serve to effect justice in the United States and in jurisdictions in which the harm caused by these crimes is most acutely experienced."

Consistent with the domestic guidance, the Memorandum instructs Criminal Division prosecutors not to credit payments that would otherwise support compensation of victims "with compensable losses" unless the "foreign authority has a more effective mechanism for directly compensating victims of the underlying crime."

The Memorandum also provides that, where the only funds available for crediting are criminal penalties that would otherwise be used for "general victim assistance" through deposit into the Crime Victims' Fund, prosecutors should "balance" the interest in "providing general assistance to victims of crimes" with "the interests of [other] jurisdictions." The Memorandum provides a non-exhaustive list of factors that prosecutors should consider in such a circumstance, including "the degree of overlap in the conduct under investigation in the parallel matters by the various authorities," "where the misconduct occurred, where and how the effects of the misconduct are felt, and seriousness of the harm," and "the equities of the investigating and prosecuting authorities involved, including how the case originated, which authorities developed key evidence, and the investigative and prosecutorial resources expended by the respective authorities."

Takeaways

Corporations considering a coordinated resolution with multiple domestic or foreign authorities will need to seek coordination earlier in the process, after careful consideration of the available penalties in each jurisdiction, and, in particular, of each

based on guidance from Deputy Attorney General Rod Rosenstein. See Paul, Weiss, "DOJ Issues New Policy on Coordination of Corporate Penalties to Address 'Piling On,'" (May 10, 2018), available [here](#).

⁴ The Memorandum notes that, with respect to DOJ resolutions: "Recoveries from bad actors can be used to compensate and support victims: restitution orders that compensate victims of the charged offenses; forfeiture orders that compensate victims through remission and restoration; and other penalties that contribute to the Crime Victims Fund, which supports a broader pool of those who have suffered at the hands of criminals."

authority's ability to compensate victims. Victim recovery, not just penalty collection, is the guiding principle for Criminal Division prosecutors coordinating resolutions across jurisdictions.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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