

Trump Pauses FCPA Enforcement: Implications for Corporate Compliance Strategies

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On February 10, President Donald J. Trump signed an [executive order](#) and accompanying [fact sheet](#) directing U.S. Attorney General (AG) Pam Bondi to pause the initiation of new investigations and enforcement actions, and to review pre-existing and in-process actions, under the U.S. Foreign Corrupt Practices Act (FCPA) until she issues revised FCPA enforcement guidance. This directive aims to promote strategic commercial advantages for the U.S. over international competitors.

The executive order was issued only five days after Bondi issued a [memorandum](#) directing the U.S. Department of Justice (DOJ) Criminal Division's FCPA Unit to prioritize investigations related to cartels and other transnational criminal organizations (TCOs), and to "shift focus away from investigations and cases that do not involve such a connection." This was part of the administration's policy of seeking the "total elimination" of these TCOs. The memorandum also suspended the requirement for U.S. attorneys' offices to obtain approval from the Criminal Division to initiate cases related to TCOs under the Foreign Extortion Prevention Act (FEPA), which could lead to less predictable enforcement in the highly sensitive area of targeting foreign government officials for corrupt activity.

These FCPA enforcement shifts come along with a number of other changes at DOJ, including Bondi's dissolution of the Russia-focused Task Force KleptoCapture and the Criminal Division's Kleptocracy Asset Recovery Initiative, with "resources currently devoted to those efforts [to] be committed to the total elimination of Cartels and TCOs." The National Security Division's Corporate Enforcement Unit has also been disbanded, and prosecutions under the Foreign Agents Registration Act (FARA) and related laws are to "be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors." While these developments could change the landscape in criminal enforcement of export controls, sanctions, FARA, and other national security areas, the real impacts remain to be seen.

The US Foreign Corrupt Practices Act

The FCPA has two main components: the anti-bribery provisions and the accounting provisions. The anti-bribery provisions make it unlawful to offer, provide, or promise to provide money or anything of value directly or indirectly to a foreign government official for the purpose of obtaining or retaining business, influencing an official act or decision, or securing an improper advantage. The accounting provisions require publicly traded companies to maintain accurate and complete books and records and implement internal controls to provide reasonable assurance that transactions are executed and recorded properly.

The DOJ and the U.S. Securities and Exchange Commission (SEC) each have their own enforcement authorities under the FCPA, with both agencies often bringing parallel enforcement actions for FCPA violations.

The Executive Order

Below are the key provisions of Trump's executive order:

- **Pause on New Investigations and Enforcement Actions:** The executive order instructs the AG to cease the initiation of any new FCPA investigations or enforcement actions for 180 days, with the possibility of an extension. During this period, the DOJ is to review existing guidelines and policies governing FCPA enforcement.
- **Review of Existing Actions:** The DOJ will conduct a detailed review of all current and past FCPA investigations and enforcement actions to ensure that these actions are within proper bounds and do not impede the president's foreign policy prerogatives.
- **Revised Guidelines:** The AG will issue updated guidelines or policies to promote the president's authority to conduct foreign affairs, prioritize American interests, and ensure efficient use of federal law enforcement resources. Future FCPA actions will require specific authorization from the AG.
- **Potential Remedial Measures:** The AG is authorized to take remedial measures regarding past FCPA actions deemed inappropriate and may recommend further actions to the president if necessary.

Implications for Corporate Compliance

While the executive order signals a potential reduction in FCPA enforcement, companies should not interpret this as a green light to relax their compliance programs. The legal framework of the FCPA remains unchanged, and only Congress has the authority to amend the statute. Moreover, the FCPA's anti-bribery provisions have a five-year statute of limitations, meaning that past violations can still be prosecuted, and future violations will likely outlive the current administration. Additionally, the SEC, which also has enforcement authority under the FCPA, has not signaled changes to its enforcement plans.

Importantly, the same conduct that implicates the FCPA often implicates other U.S. criminal statutes, such as the Racketeer Influenced and Corrupt Organizations Act (or, RICO), the Travel Act, and other laws regarding campaign finance, wire fraud, and anti-money laundering. Additionally, U.S. companies that do business abroad could also be subject to foreign anti-corruption laws, such as India's Prevention of Corruption Act and the UK's Bribery Act 2010. Finally, U.S. companies that receive federal funds, such as defense contractors and pharmaceutical and medical device companies, could face False Claims Act actions, including whistleblower qui tams, premised on violations of the FCPA.

Guidance for Companies

- 1. Maintain Robust Compliance Programs:** Companies should continue to uphold strong anti-bribery and anti-corruption policies. The DOJ's pause on new investigations does not change the legal obligations under the FCPA, and the SEC's civil enforcement authority remains intact.
- 2. Issue Guidance and Reminders to Internal Stakeholders:** It is likely that internal stakeholders have followed the news regarding the executive order. Proactively issue communications to internal stakeholders about the executive order's impact on company compliance and reiterate that employees should continue to adhere to existing policies. Consider providing updated training to re-emphasize these points.
- 3. Monitor Developments:** Stay informed about any new guidelines or policies issued by the DOJ. Also stay vigilant for any new guidance or response from the SEC regarding FCPA civil enforcement. These updates will provide clarity on the future direction of FCPA enforcement and may impact how companies approach compliance.
- 4. Evaluate Risk Exposure:** Companies currently under investigation or with active deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) should assess their risk exposure. The DOJ's review of existing actions may offer opportunities to seek closure or modification of ongoing matters.
- 5. Consider Non-FCPA Domestic Laws and International Enforcement:** The enforcement priorities of other international bodies, such as the UK's Serious Fraud Office, remain unchanged. Additionally, there are a myriad of domestic laws apart from the FCPA that target bribery and corruption. Companies must continue to comply with applicable anti-corruption laws.
- 6. Prepare for Potential Legislative Changes:** The executive order may prompt legislative efforts to amend the FCPA. Companies should be prepared for potential changes in the law that could affect their compliance obligations.

If you are currently under investigation for an alleged violation of the FCPA or have questions on how the executive order will impact your business, please do not hesitate to contact a member of Troutman Pepper Locke's White Collar Litigation and Government Investigations practice.

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