

Changed Focus of FCPA Actions Under Trump Executive Order

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On February 5, 2025, newly appointed U.S. Attorney General Pam Bondi issued a memorandum titled “Total Elimination of Cartels and Transnational Criminal Organizations” (the February 5 Memorandum), which outlined a broad policy directive aimed at dismantling cartels and transnational criminal organizations (TCOs). The Department of Justice (DOJ) directive advised of a shift in focus for Foreign Corrupt Practices Act (FCPA) cases and investigations towards those that involve criminal operations of cartels and TCOs. Further, the February 5 Memorandum provided increased prosecutorial authority to individual U.S. Attorneys’ Offices as it relates to investigations concerning cartels and TCOs.

Shortly thereafter, on February 10, 2025, President Donald Trump issued an Executive Order directing the Attorney General to pause FCPA actions indefinitely. According to the Executive Order’s Fact Sheet, at some point in the future, the Attorney General is expected to issue revised FCPA enforcement guidance “that promotes American competitiveness and efficient use of federal law enforcement resources.” While it is unclear what the new guidance will include and when it will be issued, the fact sheet states that “past and existing FCPA actions will be reviewed” and “future FCPA investigations and enforcement actions will be governed by this new guidance and must be approved by the Attorney General.”

Historical Focus and Structure of FCPA

The FCPA was enacted in 1977 as a first of its kind law intended to stem foreign corruption through its anti-bribery and accounting provisions. The DOJ’s Criminal Division has historically contained a Fraud Section with a dedicated FCPA Unit that has traditionally overseen FCPA enforcement. The focus of FCPA enforcement is generally on international bribery and corruption, regardless of the relationship to organized crime, such as cartels and TCOs. The U.S. government has historically recovered billions of dollars in fines annually from companies investigated for FCPA violations. The United States is also a signatory to the Organisation for Economic Co-Operation and Development’s Anti-Bribery Convention, which, although it has no authority to implement the convention, does require member countries to criminalize the bribery of foreign officials.

Shift in FCPA Focus and Structure

It is unclear whether the Attorney General’s upcoming memorandum will be consistent with the February 5 Memorandum, prioritizing investigations and prosecutions that involve foreign bribery linked to organized criminal networks (cartels and TCOs) and shifting focus “away from investigations and cases that do not involve such a connection.”

As stated in the Executive Order’s Fact Sheet, President Trump’s justification for the unprecedented temporary suspension of FCPA enforcement is that:

- U.S. companies are harmed by FCPA overenforcement because they are prohibited from engaging in practices common among international competitors, creating an uneven playing field;
- strategic advantages in critical minerals, deep-water ports, and other key infrastructure or assets around the world are critical to American national security;
- FCPA overenforcement infringes upon the President’s Article II authority to conduct foreign affairs, necessitating this review and new enforcement policies; and

- over time, FCPA interpretation and enforcement by U.S. prosecutors has broadened, imposing a growing cost on our Nation's economy.

The Executive Order's Fact Sheet also states that FCPA-related enforcement "drain[s] resources from both American businesses and law enforcement."

Key FCPA Takeaways

There are multiple implications of the temporary DOJ suspension of the FCPA. For businesses subject to FCPA compliance, the Executive Order does not necessarily equate to reduced enforcement risk. Much is unknown about how the Trump administration plans to enforce the FCPA. Plus, it remains to be seen how the Attorney General's anticipated revised guidance will define FCPA enforcement, including whether there will be a specific industry or regional focus in enforcement.

Notably, the Executive Order and the February 5 Memorandum do not change any of the U.S. Securities and Exchange Commission's (SEC) enforcement authority and priorities with respect to FCPA investigations, regardless of the current shift in the DOJ's priorities. As a result, companies should continue to be vigilant in light of potential civil regulatory activity.

Importantly, even with the current shift in DOJ priorities, the FCPA remains the law subject to enforcement. Further, in recent decades, countries worldwide have enacted or strengthened their own anti-corruption laws. The United Kingdom, for example, has continued to expand the extraterritorial reach of its Bribery Act enforcement. Accordingly, companies are advised to continue to maintain strong anti-bribery compliance programs, even in light of ongoing changes in U.S. DOJ enforcement priorities.

The Executive Order's Fact Sheet discussed above can be found [here](#). The February 5 Memorandum discussed above can be found [here](#).

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