

ALERT

What the FCPA Criminal Enforcement Pause Means for Companies

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Late on February 10, President Trump ordered Attorney General Pam Bondi to “pause” new Foreign Corrupt Practices Act (FCPA) enforcement for 180 days while the U.S. Department of Justice (DOJ) refocuses criminal enforcement of the statute. The Executive Order is potentially among the most significant enforcement developments related to the FCPA in years. While the directive is specific to DOJ criminal enforcement of the FCPA, the order and recent memoranda issued by Attorney General Bondi signal shifting tides in the FCPA landscape. With more to come from DOJ, and possibly the U.S. Securities and Exchange Commission (SEC) under new leadership, companies should monitor new guidance before updating their FCPA compliance programs.

The Executive Order

President Trump’s order provides Attorney General Bondi 180 days to: (1) “review in detail all existing FCPA investigations or enforcement actions and take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives” and (2) “issue updated guidelines or policies, as appropriate, to adequately promote the President’s Article II authority to conduct foreign affairs and prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources.”

During that review, DOJ cannot *initiate* any new FCPA investigations or enforcement actions unless the Attorney General determines that an individual exception is warranted. The 180-day pause on new matters can be extended for another 180 days at the Attorney General’s

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discretion.

While the exact impact of the order and forthcoming guidance remain to be seen, President Trump signaled that future FCPA enforcement under his Administration should not punish domestic entities “for routine business practices in other nations.” Similarly, a key question in future investigations should be the effect a prosecution under the FCPA has on “American economic competitiveness” and, by extension, “national security.” The order specifically calls out the need for U.S. companies to have “strategic business advantages” in “critical minerals, deep-water ports, or other key infrastructure or assets.” At bottom, by targeting the FCPA, the order seeks to eliminate “excessive barriers to American commerce abroad.”

Analysis and Takeaways

- **Only a “pause”:** The order temporarily pauses the *initiation* of new investigations or enforcement actions without the review and approval of Attorney General Bondi, who issued her own memorandum on the focus and mechanics of DOJ FCPA Enforcement immediately upon confirmation. It is unclear if or how the order impacts *ongoing* investigations and enforcement actions. Indeed, on February 11, a U.S. District Court judge asked DOJ to explain how the order impacts an upcoming FCPA trial.
- **No statutory changes:** Congress has not yet taken any action to amend, repeal, or replace any part of the FCPA. Thus, the law remains in effect and companies must continue to comply with the accounting and anti-bribery provisions.
- **Long statute of limitations:** A criminal violation of the FCPA’s anti-bribery provisions carries a five-year statute of limitations, while a criminal violation of the accounting provision carries a six-year statute of limitations. And these limitations periods can be extended while DOJ seeks foreign evidence. Importantly, recent violations, ongoing violations, or those in the next four years could still become enforcement targets in the next administration or even the current Administration (should enforcement priorities change).
- **Civil enforcement unaffected:** Nothing in the February 10 order appears to impact the SEC’s civil enforcement of the FCPA’s anti-bribery and accounting provisions against companies with U.S.-publicly traded securities. It remains to be seen, however, whether President Trump’s nominee for SEC Chair, Paul Atkins, will seek to refocus SEC’s civil enforcement of the FCPA.
- **Other statutes or jurisdictions:** Actions that trigger FCPA liability often implicate other U.S. laws, such as bid rigging, wire fraud, and money laundering. Nothing in the order impacts the enforcement of these statutes. Likewise, many countries have anti-corruption laws that remain in effect and have been more actively enforced in recent years. Whether a pause in FCPA enforcement slows down foreign anti-corruption enforcement activities also remains to be seen.

All in, much uncertainty remains about FCPA enforcement in the coming years. It is possible that the Executive Order only leads to a brief pause in new FCPA actions while DOJ brings its enforcement efforts in line with the Administration’s priorities. Indeed, Attorney General Bondi recently prioritized FCPA enforcement against cartels and transnational criminal organizations, permitting prosecutions by U.S. Attorneys’ Offices around the country without the involvement of the DOJ Criminal Division’s Fraud Section, which previously had exclusive

jurisdiction to bring FCPA actions.

Anti-corruption compliance and risk management are still beneficial and critically important without regard to the changing enforcement landscape. Companies should therefore monitor evolving guidance before significantly changing their FCPA compliance programs. Still, companies with monitorships or other agreement-imposed compliance programs may consider revisiting those terms with DOJ as the new paradigm becomes clearer.

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