
Hughes Hubbard & Reed

Navigating the Pause: FCPA Compliance Under Trump's New Order

Client Advisories

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Feb. 12, 2025 – On Monday, Feb. 10, President Donald Trump signed an executive order directing the U.S. attorney general to conduct a 180-day policy review of “guidelines and policies governing investigations and enforcement actions” by the U.S. Department of Justice under the U.S. Foreign Corrupt Practices Act (FCPA).¹ During this policy review period, FCPA enforcement is to be paused. We discuss in this client alert considerations for corporate compliance programs during this review period and beyond. The key takeaways are:

1. Companies should not enable employees to take actions based on assumptions about what conduct will not be prosecuted; any activity undertaken in violation of the letter of the law is vulnerable to whatever the final enforcement spirit might be.
2. The executive order focuses on helping U.S. companies. Non-U.S. companies that are subject to U.S. FCPA jurisdiction should be wary of assuming that any change in FCPA enforcement policy will benefit them too.
3. The pause in FCPA enforcement presents a challenge and an opportunity for tone-at-the-top messaging that may have an impact beyond compliance with the FCPA and other anticorruption laws.

Analysis

The Executive Order and Fact Sheet

The executive order instructs the attorney general to review both ongoing and concluded actions under the FCPA and to prepare new “revised, reasonable” enforcement guidelines.² The order comes just days after Attorney General Pam Bondi signed a memorandum directing DOJ’s FCPA prosecutors to prioritize FCPA investigations on conduct that facilitates the activities of “Cartels and Transnational Criminal Organizations.”³

According to the White House, the executive order’s purpose is to help level the global playing field for U.S. businesses and ensure that DOJ’s FCPA enforcement aligns with the administration’s foreign policy priorities. The White House Fact

Sheet on the executive order referred without specificity to “practices common among international competitors” that U.S. companies “are prohibited from engaging in” due to “FCPA overenforcement.”⁴ The order does not, however, state that no FCPA enforcement is appropriate. The order also does not apply to the U.S. Securities and Exchange Commission, which prosecutes civil violations of the FCPA by U.S. and non-U.S. issuers of securities traded on U.S. exchanges.⁵

The executive order leaves several questions unanswered pending the results of the attorney general’s policy review. Paramount among them is, what will the new enforcement guidelines say? Will FCPA enforcement essentially be stayed for the remainder of the Trump administration, or will enforcement efforts be focused on specific activities or geographies? What will come of the review of concluded DOJ FCPA actions? What will happen to those actions that do not fit squarely into either the ongoing or concluded bucket (e.g., ongoing deferred prosecution agreements)? Beyond the speculation regarding the forthcoming revised enforcement guidelines, we also await answers to how a change in FCPA enforcement will impact the broader corporate enforcement framework that has been established and refined over the past decade. Will broader changes be coming to the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) or the guidelines provided by the Evaluation of Corporate Compliance Programs (ECCP), which have their origin in FCPA enforcement but of which, today, FCPA compliance is but just a part? If not, how will the new FCPA enforcement guidelines fit alongside the CEP and ECCP? What does a de-emphasis on FCPA enforcement mean for legal requirements regarding accurate books and records? Should we expect the SEC also to halt enforcement?

Until these questions are answered, it will be difficult for companies to make any meaningful decisions regarding FCPA compliance resource deployment or risk reevaluation.

Interim Considerations

For the time being, companies assessing how this executive order may impact their FCPA compliance program should keep the following considerations in mind:

1. Activities that violate the letter of the law will remain vulnerable to changes in enforcement prioritization. Jettisoning compliance efforts, during or regardless of the outcome of the attorney general’s 180-day review, carries significant long-term risks given that the current administration or a future administration may shift FCPA enforcement priorities. The FCPA’s statute of limitations for criminal conduct extends beyond the four years of the Trump administration — five years for substantive violations of the anti-bribery provisions and six years for violations of the accounting provisions, both of which can be extended an additional three years if the U.S. government seeks overseas evidence.⁶
2. The executive order is motivated by a desire to advantage U.S. companies. Non-U.S. companies subject to U.S. FCPA jurisdiction should not assume that any revised DOJ policy will treat them equally.
3. The DOJ is not the only game in town. As noted, the executive order applies only to FCPA enforcement by the DOJ, leaving outside its purview agencies such as the SEC, which is also involved in FCPA-related matters. The order also does nothing to alter the priorities of foreign law enforcement authorities who may well step up their investigations if they perceive a shift in resources away from corporate FCPA cases at DOJ. Recent years have already seen a growing assertiveness in the anti-corruption space by agencies such as the UK’s Serious Fraud Office and French prosecutors and judicial authorities including the Parquet national financier (of particular note given the extraterritoriality of French anti-corruption law), and by multilateral development banks.
4. Tone-at-the-top and compliance cultures are well recognized as cornerstones of effective compliance programs — including under the U.S. sentencing guidelines referenced by U.S. federal courts in imposing penalties on corporations. Delaware and other U.S. states also impose duties on corporate officers and directors to ensure an effective compliance program is in place and that management responds appropriately to “red flags” of potential illegal conduct. Companies should accordingly be wary of any internal messaging shifts that may, explicitly or implicitly, condone, or be seen as

condoning, corrupt activity (which remains a violation of U.S. and most likely local law in countries around the world). In other words, a company should ask itself whether turning a blind eye toward corruption could have a follow-on effect on a company's ability to establish a strong culture of compliance around other areas of the law, such as sanctions, export controls or money laundering.

Our Global Investigations, Enforcement & Compliance practice group will be monitoring these developments closely. We are happy to compare notes and discuss best strategies for the near and long term. Please do not hesitate to contact us.

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1. The White House, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, [Executive Order](#) (Feb. 10, 2025); see also Dave Michaels, *Trump Curbs Enforcement of Antibribery Law*, WSJ (Feb. 10, 2025), <https://www.wsj.com/politics/policy/trump-to-curb-enforcement-of-antibribery-law-0e889518>. ↵
 2. *Id.* ↵
 3. [Memorandum](#), Total Elimination of Cartels and Transnational Criminal Organizations, DOJ, Feb. 5, 2025. ↵
 4. The White House, [Fact Sheet](#): President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement (Feb. 10, 2025). ↵
 5. See Eamon Javers and Dan Mangan, *Trump to Pause Enforcement of Law Banning Bribery of Foreign Officials*, CNBC (Feb. 10, 2025), <https://www.cnbc.com/2025/02/10/trump-doj-foreign-corrupt-practices-act-pause.html>; The White House, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, [Executive Order](#) (Feb. 10, 2025). ↵
 6. 18 U.S.C. § 3292. ↵

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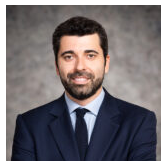
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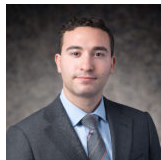
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