

An In-House Compliance Guide for Responding to President Trump's Executive Order on Foreign Corrupt Practices Act Enforcement

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As has widely been published, on February 10, 2025, President Trump signed Executive Order (EO) 14209, which paused all future investigations and enforcement actions under the Foreign Corrupt Practices Act (FCPA) for at least 180 days.

As a former in-house counsel who was responsible for FCPA compliance, I have considered this Executive Order from an in-house counsel perspective, and thought about the steps I would take in response.

In this alert, we review the significance and details of EO 14209 and provide practical and actionable advice for the benefit of in-house counsel and compliance officers. Additionally, this alert should assist in-house counsel and compliance officers in conversations with their business clients who may have questions about the Executive Order.

Background on the FCPA

Briefly, the Foreign Corrupt Practices Act (FCPA) is a law enacted by Congress in 1977 to combat bribery in international business transactions. It consists of two main components:

- 1. Anti-Bribery Provisions:** These provisions prohibit U.S. individuals and entities from offering, promising, or giving anything of value to foreign officials with the intent to obtain or retain business.
- 2. Accounting Provisions:** These provisions require publicly traded companies to maintain accurate books and records and implement sufficient internal accounting controls.

The FCPA is jointly enforced by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).

The Executive Order

The President's Executive Order cites several reasons for imposing the pause:

- 1. Economic Competitiveness:** The Executive Order states that “overexpansive and unpredictable FCPA enforcement” harms American economic competitiveness.
- 2. National Security:** The Executive Order states that FCPA enforcement has impeded U.S. companies from obtaining strategic advantages in critical infrastructure and assets, which has national security implications.
- 3. Foreign Policy Objectives:** The Executive Order states that current FCPA enforcement impedes the United States' foreign policy objectives and implicates the President's Article II authority over foreign affairs.

Attorney General Responsibilities During Suspension

During the 180-day review period, the Executive Order directs Attorney General Pam Bondi to:

- 1. Cease initiation of new FCPA investigations or enforcement actions** unless an individual exception is determined necessary.
- 2. Review all existing FCPA investigations and enforcement actions in detail** and take appropriate action on existing matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives.
- 3. Issue updated guidelines or policies to promote the President's authority to conduct foreign affairs,** prioritize American interests and economic competitiveness, and ensure efficient use of federal law enforcement resources.
- 4. After the revised guidelines or policies are issued, determine whether additional actions are warranted,** including remedial measures for past FCPA investigations and enforcement actions.

The Attorney General has the authority to extend this review period for an additional 180 days if necessary.

Looking Forward

It is still too early to understand the full implications of this Executive Order, and further DOJ guidance is needed. However, the Executive Order does appear to signal a notable shift in FCPA enforcement.

On February 5, 2025, Attorney General Pam Bondi issued a memorandum titled “Total Elimination of Cartels and Transnational Criminal Organizations” that outlines the Department of Justice’s priorities for FCPA enforcement. Key changes outlined in this memorandum include:

1. Prioritizing Cartel-Related Investigations: The DOJ’s FCPA Unit is now directed to prioritize investigations related to foreign bribery that facilitate the criminal operations of cartels and transnational criminal organizations (TCOs).

2. Shift Away from Traditional FCPA Cases: The memo instructs prosecutors to “shift focus away from investigations and cases that do not involve such a connection” to cartels and TCOs.

As an example, the memo states that the focus should be on bribery cases involving bribery of foreign officials that facilitate human smuggling and the trafficking of narcotics and firearms.

3. Increased Autonomy for U.S. Attorneys’ Offices: The requirement for the Fraud Section of DOJ’s Criminal Division to authorize and conduct all FCPA investigations has been suspended for cases associated with cartels or TCOs. Local U.S. Attorneys’ Offices now have more autonomy to bring such cases, needing only to provide 24 hours notice to the Main Justice before seeking charges.

What Should Companies Do Now?

Although enforcement of the FCPA has been paused, it remains an important piece of legislation that can only be repealed by the U.S. Congress. It is important to note that, notwithstanding the pause in U.S. enforcement, companies must still consider other foreign nations’ anti-corruption laws and their company’s ethical standards. So, to revisit the question, what would I do?

1. Level Set

In-house counsel should meet with internal stakeholders in the legal and compliance department and reiterate the fact that the FCPA is still fully in effect. A very simple point should be stressed: the priorities of today may not be the priorities of tomorrow - and, one day, the pendulum could swing back the other way.

It should also be noted that the statute of limitations for substantive violations of the FCPA anti-bribery provisions extends to five years, and for violations of the FCPA accounting provisions, there is a limitation period of six years. The same message should be delivered to the business.

Accordingly, the message to the business should be clear: because enforcement priorities could change in the future, the company should continue to address all aspects of FCPA compliance and continue to maintain a robust anti-corruption compliance program and ethical practices to safeguard its operations.

2. Program Evaluation

Next, in-house counsel should evaluate the implications of the Executive Order and the Attorney General's memorandum.

The shift in enforcement focus is likely to have several effects on corporate compliance programs. Here are some things to consider.

Risk Assessment:

- In regions with known cartel or TCO activity, a compliance risk assessment may be necessary. A risk assessment will allow the company to identify areas of vulnerability within its operations.
- Among other things, a risk assessment could lead to the reallocation of resources and/or the implementation of controls to mitigate risks. A risk assessment will help ensure that an organization is adequately prepared to manage bribery and corruption risks.

Enhanced Due Diligence:

- Given the Executive Order and other actions by the administration, enhanced due diligence should certainly be considered by in-house counsel. For example, the Trump Administration has designated certain drug cartels as global terrorist organizations, which creates another layer of risk for organizations; now, a bribe could lead to prosecution for material support of a terrorist group.

Updated Training:

- In-house counsel should consider updating company training to teach their employees how to identify potential links to cartels and TCOs.

Third-Party Risk Management:

- To minimize FCPA risks when working with third-party business partners, companies often research and conduct due diligence before engaging them. Additionally, companies regularly audit and monitor their third-party business partners during the engagement to ensure that they are complying with the company's compliance requirements.
- As part of your third-party risk management program, now may be a good time to review your compliance requirements and expectations with some of your third-party business partners (depending on their risk profile) and provide any additional training as needed.
- By clearly communicating your expectations regarding compliance, third parties will understand the importance of maintaining ethical standards, practices, and a culture of integrity.

Conclusion

In conclusion, companies should continue to maintain robust anti-corruption compliance programs and ethical practices to safeguard their operations. They should also continue to address all aspects of FCPA compliance, as

enforcement priorities may change again in the future.

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