

# Memorandum

## Significant Changes to Global FCPA Enforcement Are Likely

February 11, 2025

Yesterday, President Trump signed an executive order (the “Executive Order”) and the White House released an accompanying “Fact Sheet” directing the Department of Justice (“DOJ”) to “pause” the initiation of new investigations and enforcement actions under the Foreign Corrupt Practices Act (“FCPA”) until new guidance is issued that “promotes American competitiveness and efficient use of federal law enforcement resources,” and to review existing actions. Citing the President’s “foreign policy authority,” the Order states that “overexpansive and unpredictable FCPA enforcement against American citizens and businesses . . . actively harms American economic competitiveness and, therefore, national security.” The Fact Sheet observes that FCPA “overenforcement” prevents American companies from “engaging in practices common among international competitors, creating an uneven playing field.”<sup>1</sup>

The Executive Order (i) directs Attorney General Pam Bondi to cease initiation of any new FCPA investigations and enforcement actions for a period of at least 180 days, subject to individual exceptions at her discretion, until the Attorney General issues new enforcement guidance, (ii) directs DOJ to review current and past FCPA actions and “take appropriate action . . . to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives,” (iii) requires the Attorney General’s approval for all future FCPA investigations and enforcement actions, and (iv) authorizes the Attorney General to remedy any past FCPA actions that she determines were “inappropriate.”<sup>2</sup>

The Executive Order comes on the heels of changes to FCPA enforcement priorities set forth in a February 5, 2025 memorandum from Attorney General Bondi (the “Bondi Memo”), which directed prosecutors to reprioritize investigations to focus on “foreign bribery that facilitates the criminal operations of Cartels and [Transnational Criminal Organizations], and shift focus away from investigations and cases that do not involve such a connection.”<sup>3</sup>

**What does this all mean?** The answer is that it is too early to tell. Companies would be ill-advised to materially change their anti-bribery and corruption policies and internal controls, or to permit their employees or third-party intermediaries to engage in questionable business practices, under a belief that DOJ will look the other

<sup>1</sup> Fact Sheet (Feb. 10, 2025), available [here](#).

<sup>2</sup> Exec. Order (Feb. 10, 2025), available [here](#).

<sup>3</sup> Op. Att’y Gen., *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5, 2025), available [here](#).

way. It is critical to note that the scope of the FCPA remains unchanged as a legal matter, that only Congress can amend the statute, and that the FCPA's anti-bribery provisions have a five-year statute of limitations. International corruption schemes often implicate other U.S. criminal statutes, including the wire fraud statute, anti-money laundering laws, and the Travel Act. In addition, the U.S. Securities and Exchange Commission ("SEC") has civil enforcement authority over the FCPA, and it has not yet issued guidance on its own FCPA enforcement plans. The enforcement priorities of other international corruption prosecutors, such as the United Kingdom's Serious Fraud Office, which prosecutes violations of the U.K. Bribery Act, remain unchanged for the time being. And one can imagine State Attorneys General stepping into any void created by non-enforcement at the federal level.<sup>4</sup>

Without question, however, the Executive Order is highly relevant as to how the DOJ will **exercise its prosecutorial discretion** with respect to initiating new investigations, continuing existing investigations, making charging decisions, and otherwise allocating enforcement resources during the next four years. The Executive Order halts the initiation of new investigations and enforcement actions until new guidance is issued. It does not provide any details on the consequences for current FCPA investigations and filed actions, other than noting that current and past actions will be "reviewed" and that prosecutors will be directed to "take appropriate action . . . to restore proper bounds on FCPA enforcement." It is unclear what will happen to charged matters awaiting trial, such as whether prosecutors will be asked to request that courts "pause" ongoing proceedings, similar to what happened last week in actions with the Consumer Financial Protection Bureau ("CFPB"). Companies subject to active investigations may have a stronger case for convincing prosecutors and their supervisors to close matters, particularly in marginal cases. There is also uncertainty regarding the impact on active deferred prosecution agreements ("DPAs") and non-prosecution agreements ("NPAs") and their standard requirements for ongoing compliance enhancements and self-reporting obligations. And with the possibility of DOJ taking "remedial measures with respect to inappropriate past FCPA investigations and enforcement actions," individuals and companies that believe they were subject to overzealous FCPA actions may have an opportunity to ask the DOJ to revisit settled matters.

It remains to be seen what the Trump Administration's enforcement priorities will be once the "pause" is lifted. It is reasonable to expect that the resources of the DOJ's FCPA unit will be reduced, perhaps significantly. It also seems likely that DOJ will focus FCPA resources on matters involving Transnational Criminal Organizations (consistent with the Bondi Memo) and potentially higher dollar-value and clearer-cut bribery schemes, while deprioritizing matters with jurisdictional challenges, where the alleged corruption involves smaller payments, or where the evidence of actual corrupt intent is questionable. Based on the stated desire to promote "American competitiveness," DOJ may disfavor prosecutions of U.S. companies in regions of the world where anti-bribery laws are otherwise not rigorously enforced against foreign competitors. And conversely, FCPA enforcement could be more likely if one U.S. company or U.S.-listed foreign company engages in bribery to obtain an unfair

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<sup>4</sup> Notably, the Executive Order does not withdraw or alter the DOJ's "Evaluation of Corporate Compliance Programs" that were updated as recently as September 2024.

advantage over other U.S. companies that are operating ethically. The Executive Order’s emphasis on “national security” suggests that there may be heightened attention on FCPA enforcement in circumstances where bribes may prop-up corrupt officials in regions where U.S. national security priorities are focused.

More broadly, the Executive Order appears to be a precursor to a broader overhaul of FCPA enforcement—and perhaps even the law itself. While, as noted, the Executive Order does not address the civil enforcement priorities of the SEC, it seems likely that similar measures will follow in the SEC space given past criticisms that the SEC has stretched the jurisdiction of the FCPA’s accounting provisions beyond what Congress intended. Moreover, the Administration’s criticism of the FCPA could prompt allies in Congress to consider legislation to repeal or amend certain aspects of the relevant statutes.

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