

President Trump Orders FCPA Freeze; DOJ Announces Major Policy Realignment De-Emphasizing Corporate Investigations and Enforcement

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The [much-heralded end](#) to prosecutions brought pursuant to the Foreign Corrupt Practices Act (FCPA)¹ never materialized during the first Donald Trump administration, but the second Trump administration has the potential to bring major change to the US Department of Justice's (DOJ) approach to FCPA enforcement.

On 10 February 2025, President Trump issued an executive order² freezing the initiation of all new FCPA investigations and enforcement actions for 180 days. The executive order also instructs newly confirmed Attorney General (AG) Pam Bondi to promulgate guidelines on FCPA enforcement and conduct a comprehensive review of existing and historical FCPA investigations and resolutions.

President Trump's directive comes on the heels of more than a dozen policy memoranda³ issued by AG Bondi on 5 February 2025, that will fundamentally realign DOJ's operations and enforcement priorities during the second Trump administration. Two key DOJ directives—the memorandum on "Total Elimination of Cartels and Transnational Criminal Organizations" (TCO Memo) and DOJ's new "General Policy Regarding Charging, Plea Negotiations, and Sentencing" (General Policy Memo)—when taken in concert with the new executive order, have the potential to bring about a seismic shift in DOJ's approach to corporate investigations and enforcement.

What will the new FCPA guidelines look like? How will DOJ implement the FCPA guidelines and its

other recent policy announcements? How will DOJ integrate them into forthcoming changes to the DOJ's Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy? The answers to these questions will largely define the corporate enforcement landscape for the second Trump administration and beyond.

Freezing FCPA Enforcement

The 10 February 2025, executive order, entitled “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security,” rests on two fundamental claims: (1) “Current FCPA enforcement impedes the United States’ foreign policy objectives and therefore implicates the President’s Article II authority over foreign affairs;” and (2) “[O]verexpansive and unpredictable FCPA enforcement against American citizens and businesses...actively harms American economic competitiveness and, therefore, national security.” According to the fact sheet accompanying the executive order, aggressive FCPA enforcement has imposed “a growing cost on our Nation’s economy” and harmed the ability of US companies to obtain “[s]trategic advantages in critical minerals, deep-water ports, and other key infrastructure or assets around the world [that] are critical to American national security.” Given the weighty constitutional, economic, and national security implications at stake, the executive order directs DOJ to:

- Immediately cease initiation of any new FCPA investigations or enforcement actions for the next 180 days, unless the Attorney General determines that an individual exception should be made;
- 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
- Within 180 days, adopt a “Policy of Enforcement Discretion” by issuing 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.

The executive order then prescribes that FCPA investigations and enforcement actions initiated or continued after issuance of the revised guidelines or policies “must be specifically authorized by the Attorney General.” The Attorney General also must comprehensively review DOJ’s FCPA enforcement actions from a historical perspective in order to “determine whether additional actions, including remedial measures with respect to inappropriate past FCPA investigations and enforcement actions, are warranted and shall take any such appropriate actions or, if Presidential action is required, recommend such actions to the President.”

Shifting Enforcement Priorities From Corporates to Cartels

A few days before issuance of the executive order on the FCPA, DOJ issued the TCO Memo and General Policy Memo, which aim to implement President Trump’s goal of attacking the operation of cartels and transnational criminal organizations (TCOs) in the United States and abroad by shifting DOJ’s priorities away from corporate enforcement to four new areas of focus: (1) illegal immigration; (2) transnational organized crime, cartels, and gangs; (3) human trafficking and smuggling; and (4) protecting law enforcement personnel.

Narrowing and Shifting FCPA Enforcement

The TCO Memo also orders a major redirection of resources and focus at DOJ’s FCPA Unit,

perhaps the preeminent weapon in DOJ's corporate enforcement arsenal.

The TCO Memo directs FCPA Unit prosecutors to “prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs, and shift focus away from investigations and cases that do not involve such a connection.” For example, the TCO Memo describes hypothetical cases in which bribery of foreign officials occurs to facilitate human smuggling or narcotrafficking. Historically, such cases represent a tiny minority of DOJ's overall anti-corruption enforcement activity. In instances where the underlying investigations and prosecutions are related to cartels and TCOs, the TCO Memo suspends the requirement that FCPA investigations and prosecutions, as well as those under the newly enacted Foreign Extortion Prevention Act (FEPA),⁴ be led by Fraud Section prosecutors.

Deprioritizing Antikleptocracy

The operational and policy shifts at another key DOJ corporate enforcement component, the Criminal Division's Money Laundering and Asset Recovery Section, are even more drastic. The TCO Memo shuts down various high-profile antikleptocracy initiatives, including the Kleptocracy Asset Recovery Initiative⁵ and Task Force KleptoCapture,⁶ DOJ's marquee unit tasked with enforcing sanctions on Russian oligarchs in response to the 2022 Ukraine invasion. Federal prosecutors assigned to those initiatives are instructed to return to their prior posts, and resources formerly devoted to those initiatives will be redirected to the “total elimination of Cartels and TCOs.”

Expanding Corporate Enforcement Authority for US Attorney's Offices Nationwide

The TCO Memo also authorizes US attorney's offices nationwide to independently initiate FCPA/FEPA investigations and prosecutions in matters related to cartels and TCOs as part of an effort to remove “bureaucratic impediments” to implementation of DOJ's new policy objectives. Other bureaucratic impediments removed by AG Bondi include the elimination of the preindictment review requirement for capital-eligible offenses for cases where the defendants are alleged to be members or associates of cartels or TCOs.⁷ Similarly, approval requirements from DOJ's National Security Division (NSD) for terrorism and International Emergency Economic Powers Act (IEEPA) charges,⁸ search warrants, and material witness warrants are also suspended when the matter involves members or associates of any cartel or TCO designated as a foreign terrorist organization. Approval requirements for the filing of racketeering charges⁹ are likewise suspended for matters involving cartels and TCOs.

Analysis

The executive order and the Bondi policy memoranda are high-level directives that prescribe an unmistakable shift in DOJ's programmatic focus away from anti-corruption and antikleptocracy enforcement—at least for now. If taken at face value, the actions mandated by the executive order are comprehensive: DOJ must not only promulgate new enforcement guidelines but must also systematically review all historical FCPA resolutions and determine whether any “remedial measures with respect to inappropriate past FCPA investigations and enforcement actions” are warranted.

How Will the Forthcoming DOJ Guidelines Define the “Proper Bounds” on FCPA Enforcement?

The executive order is predicated on the dual imperatives to “preserve Presidential foreign policy prerogatives” and return US companies to a globally competitive footing. Accordingly, the

forthcoming guidelines will undoubtedly contain a requirement to consider and analyze the potential foreign policy implications of a proposed FCPA enforcement action—a constitutional “deconfliction” provision of sorts. Where the Bondi DOJ views a prior FCPA action brought forth by the prior administration’s DOJ to have significant geopolitical sensitivities, don’t be surprised if these matters are restructured or even dismissed under this executive order. The guidelines can also be expected to incorporate DOJ’s new enforcement priorities related to elimination of TCOs and cartels. Federal prosecutors will also likely be directed to consider any potentially adverse consequences to US national security like access to critical rare-earth minerals, deep-water ports, and the other key strategic and infrastructural considerations similar to those enumerated in the fact sheet.

The “Pipeline Effect”

Federal corporate investigations typically take many years from initiation to resolution, a timeline that can be significantly dilated by DOJ’s use of mutual legal assistance requests to its international partner agencies. Per the executive order, the dozens of FCPA investigations currently in the “pipeline” will be re-evaluated and are all potentially subject to discontinuation and declination. It is unclear what proportion of ongoing FCPA investigations and enforcement actions will be deemed incompatible with the forthcoming guidelines and discontinued after expiration of the 180-day freeze.

Whither the SEC?

Conspicuously absent from the executive order is any directive to the US Securities and Exchange Commission (SEC) related to its civil enforcement jurisdiction over the FCPA for issuers.¹⁰ The fact sheet accompanying the executive order mentions the SEC only once when citing statistics for investigations and enforcement actions initiated in 2024. As of this writing, it is unclear whether the SEC will receive an analogous directive to fundamentally re-evaluate its application of the statute and remediate any “inappropriate” FCPA resolutions from years past.

Who Will Exercise Enforcement Authority?

The executive order specifies that the Attorney General must authorize all FCPA investigations that are initiated or continued following promulgation of the new guidelines. This directive is seemingly at odds with the TCO Memo’s grant of authority to each of DOJ’s 94 US attorney’s offices to independently investigate and charge FCPA/FEPA cases related to TCOs and cartels. It is worth noting that similar requirements have been relaxed for preclearance of IEEPA and Racketeer Influenced and Corrupt Organizations Act (RICO) cases, too, a move that could expand the kinds of charges DOJ brings in corporate enforcement investigations with a cartel or TCO nexus. Time will tell how tight the nexus between the alleged foreign bribery and the cartel or TCO must be, but it is possible that unleashing hundreds of additional federal prosecutors on the FCPA and FEPA statutes will lead to a more robust—albeit significantly modified—enforcement landscape. Ironically, the TCO Memo’s loosening of approval requirements in FCPA and FEPA cases may have the effect of *increasing* the volume of FCPA enforcement across DOJ’s many subdivisions in this administration’s new priority areas of focus.

Global Enforcement Activity Remains Strong

DOJ routinely works its cross-border investigations with international partner agencies, [some of whom have already signaled](#)¹¹ that they will continue their aggressive enforcement posture irrespective of DOJ’s policy realignment. Over the years, the United States has worked closely with partner nations and international organizations, like the Organization for Economic Co-operation and Development, to persuade countries around the world to enact and enforce domestic bribery laws.

And even if US enforcers take their foot off the anti-corruption gas pedal, global enforcement of similar anti-corruption laws from authorities like the UK Serious Fraud Office, India's Central Bureau of Investigation, Brazil's Federal Prosecution Office, Singapore's Corrupt Practices Investigation Bureau, and others will continue.

Key Takeaways

Prudent companies should not take the recent executive order and DOJ memoranda as an invitation to relax antibribery and other forms of corporate compliance. Despite the ostensible shift at DOJ, regulators and enforcement agencies across the federal government will continue work in related areas, like economic sanctions and export controls that present complex regulatory and enforcement risks. And even in the FCPA space, certain core prosecutions will likely continue following the review mandated by the executive order, especially in cases where significant violative conduct is directed from the United States.

Additionally, the statute of limitations for a violation of the FCPA is five years, which can be extended by up to three years in instances where DOJ is pursuing evidence from a foreign authority by way of a mutual legal assistance treaty request. In other words, a bribe paid today could ultimately be prosecuted under future administrations well after President Trump has left office. Moreover, the scope and nature of DOJ's policy shift remains to be seen, and the nexus to cartels and TCOs that DOJ will regard as sufficient to warrant bringing FCPA, FEPA, and RICO charges against companies may be quite attenuated. Accordingly, companies doing business in jurisdictions with a higher presence of cartels and other forms of transnational organized crime should consider stepping up their compliance and due diligence efforts, especially with respect to third-party engagements to ensure no direct or indirect links to problematic entities.

More broadly, effective compliance programs can be an especially powerful prophylactic tool, even given the coming shift in DOJ's priorities and resource allocation. In enforcement areas that are being deprioritized by DOJ, companies may now enjoy unprecedentedly favorable odds of avoiding prosecutions if they can demonstrate that allegedly problematic conduct was an isolated incident that the company promptly investigated and effectively remediated. As always, robust and proactive compliance policies that are regularly tested and improved can pay huge dividends over the long haul.

Footnotes

¹ Renae Merle, *Trump called global anti-bribery law 'horrible.' His administration is pursuing fewer new investigations*, WASHINGTON POST (Jan. 31, 2020), <https://www.washingtonpost.com/business/2020/01/31/trump-fcpa/>.

² *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, THE WHITE HOUSE (Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>. The accompanying fact sheet issued by the White House in conjunction with the executive order, *Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement*, THE WHITE HOUSE (Feb. 10, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores->

³ AG Bondi's memoranda involve a wide range of topics, including: reviving the federal death penalty and supporting state prosecutions of death row inmates commuted by former President Biden; establishing an October 7th task force; establishing a "Weaponization Working Group" to review DOJ investigations into, and prosecutions of, President Trump and January 6th; implementing requirements for all DOJ personnel to "zealously" defend, advance, and protect the interests of the United States; returning all DOJ employees to in-person work; prohibiting DOJ from issuing "improper" guidance documents instead of conducting rulemaking; ending "illegal DEI and DEIA discrimination and preferences" and "internal discriminatory practices"; reinstating prohibitions on third-party settlements; rescinding DOJ's environmental justice memorandum; and ending federal support for sanctuary jurisdictions. The complete list of the memoranda is available at <https://www.justice.gov/ag/select-publications>.

⁴ For more on FEPA, see our prior alert: [Criminalizing the "Quo:" The New Foreign Extortion Prevention Act Targets the Demand Side of Bribery | HUB | K&L Gates](#).

⁵ The Kleptocracy Asset Recovery Initiative prioritized recovering assets misappropriated by corrupt foreign officials, particularly through bribery and embezzlement schemes. One of its most prominent enforcement actions includes the recovery of over US\$1.5 billion in misappropriated funds tied to the Malaysian sovereign wealth fund 1Malaysia Development Berhad, including a recent additional recovery of US\$20 million.

⁶ Task Force KleptoCapture, established in March 2022, was created to enforce sanctions, export restrictions, and economic countermeasures by prosecuting violators and seizing assets. Since its launch, the task force has pursued numerous high-profile cases, leading to asset seizures, criminal charges, and forfeiture proceedings against individuals and entities attempting to circumvent US sanctions and launder illicit proceeds.

⁷ U.S. Dep't of Just., Just. Manual § 9-10.060 (2023).

⁸ The policy exempts NSD approval and concurrence requirements for cases involving 18 U.S.C. §§ 2332a, 2332b, 2339A, 2339B, 2339C, 2339D, 21 U.S.C. § 960A, and 50 U.S.C. § 1705.

⁹ 18 U.S.C. §§ 1961–1968.

¹⁰ CRIMINAL DIV., U.S. DEP'T OF JUSTICE & ENF'T DIV., U.S. SEC. & EXCH. COMM'N, FCPA: A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT 20 (2d ed. 2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>.

¹¹ Mohamad Al As and Austin Camoens, *MACC: 1MDB asset recovery to continue despite shake-up at US DoJ*, NEW STRAITS TIMES (Feb. 9, 2025), <https://www.nst.com.my/news/nation/2025/02/1172739/macc-1mdb-asset-recovery-continue-despite-shake-us-doj>.

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