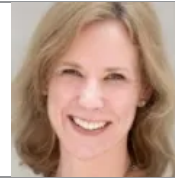




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# Skadden Discusses Anti-Bribery and Corruption Risks Despite FCPA Enforcement Pause

*By Maria Cruz Melendez, Andrew M. Good, Andrea Griswold, Emily Reitmeier Haffner and Bora P. Rawcliffe* February 27, 2025

## Comment

On February 10, 2025, President Donald Trump signed an executive order directing the U.S. attorney general, Pam Bondi, to [pause Foreign Corrupt Practices Act \(FCPA\) actions](#) for 180 days until she issues revised FCPA enforcement guidance to “prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources.” (For background on the order, see our February 11, 2025, article “[Trump Orders Attorney General To Temporarily Pause FCPA Enforcement.](#)”)

The executive order appears to refer to corporate enforcement and does not discuss individual prosecutions or enforcement of the Foreign Extortion Prevention Act (which penalizes demand-side foreign bribery). Importantly, it also specifies that after revised guidelines or policies are issued, the attorney general is to determine whether additional actions, including remedial measures “with respect to inappropriate past FCPA investigations and enforcement actions, are warranted.”

A [White House fact sheet](#) describes the rationale for the executive order as an effort to stop “excessive, unpredictable FCPA enforcement that makes American companies less competitive.” The fact sheet states that FCPA “overenforcement” harms U.S. companies because it prohibits them from engaging in practices common to international competitors.

The executive order follows a February 5, 2025, [attorney general memorandum](#) instructing the DOJ Criminal Division’s FCPA Unit to prioritize investigations related to foreign bribery that facilitates the operations of cartels and transnational criminal investigations and “shift focus away” from cases that do not involve such connections.

## Important Considerations Going Forward

- As a result of the executive order, current investigations will be put on pause while the DOJ reviews past and existing actions and waits for the attorney general’s guidance on FCPA matters. Companies will need to determine how to proceed during the pause, including by understanding the implications of ongoing cooperation with the DOJ and any potential changes in strategy with respect to cooperation and self-disclosures.
- Shifting DOJ priorities are likely to disincentivize whistleblower reports on bribery issues to the DOJ, but those reports may wind up being made to other U.S. or non-U.S. authorities, or the media.
- The Securities and Exchange Commission (SEC) is not subject to this order and does not appear to be prohibited from continued enforcement of the FCPA, though priorities, resourcing and pace of enforcement may shift in the near term. The SEC has civil FCPA enforcement authority over U.S. issuers, which includes enforcing the requirement to have reasonable accounting controls as well as accurate books and records.
- Following the attorney general’s review and guidance, DOJ FCPA enforcement may continue with a focus on non-U.S. companies (which may align with policies to improve the “competitiveness” of U.S. companies) and where foreign bribery is connected to cartels or transnational criminal matters. The DOJ and SEC may also rely on securities or wire fraud statutes to pursue non-U.S. companies engaged in bribery that seek to access U.S. capital markets or U.S. investors.
- Companies should also assess differing enforcement landscapes in jurisdictions where they operate and adjust risk assessments accordingly. Enforcement authorities outside of the U.S. and international organizations, such as development banks, may become more aggressive to fill the perceived gap in enforcement.

- DOJ collaboration and communication with foreign authorities on anti-bribery and corruption issues is likely to moderate, but mutual legal assistance treaty obligations may require the DOJ to continue to respond to international requests.

## Anti-Bribery and Corruption Risks Remain

Companies and financial institutions should continue to remain cognizant that the FCPA is valid and enforceable U.S. law, subject to a five-year statute of limitations. The statute of limitations can be extended up to three more years while the DOJ requests evidence from foreign authorities. In the case of a purported conspiracy, the statute of limitations does not begin to run until the last “overt act” has been completed. This is important because DOJ priorities could shift either during the Trump administration or in four years, under a new administration.

Corruption issues will also continue to remain a concern for non-U.S. authorities, which have increasingly boosted anti-bribery and corruption laws as well as corporate enforcement mechanisms in recent years. There will also be continued scrutiny by auditors and counterparties, including, for example, in connection with financing and shareholder agreements — those will continue to have anti-bribery and corruption provisions, and require related representations and warranties. Federal contractors and grantees may also continue to be required to certify compliance.

Risks will also remain in connection with reputational harm or potential civil claims by competitors, shareholders or other third parties.

Multinational organizations have expended considerable time, effort and resources to implement and develop risk-based compliance programs and ingrain a culture of compliance from the top down in response to U.S. enforcement priorities and the above risks. That work continues to remain valuable and relevant, and prior U.S. government guidance on anti-bribery and corruption compliance will almost certainly continue to be considered best practice by other international authorities.

*This post comes to us from Skadden, Arps, Slate, Meagher & Flom LLP. It is based on the firm’s memorandum, “Anti-Bribery and Corruption Risks Remain Despite FCPA Enforcement Pause,” dated February 12, 2025, and available [here](#).*

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