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DOJ Ends FCPA Enforcement Pause

Client Advisories

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June 11, 2025 – On June 9, Deputy Attorney General Todd Blanche issued a memorandum announcing new Foreign Corrupt Practices Act (FCPA) enforcement guidelines. The memorandum responds to President Donald Trump's Feb. 10 Executive Order 14209 (the Executive Order) that temporarily paused new FCPA investigations and called for a reorientation of FCPA enforcement priorities to better align with U.S. economic and national security interests.

Key Takeaways

1. **180-Day Pause Being Lifted but Review Ongoing.** Expect FCPA investigations and enforcement actions to resume, but they will focus on new enforcement priorities. The case-by-case review of existing FCPA investigations and enforcement actions is ongoing and will consider these new enforcement priorities.
2. **Refocused Enforcement Priorities.** Going forward, FCPA enforcement will prioritize the following areas:
 - a. Bribery "linked" to cartels and transnational criminal organizations (TCOs)
 - b. Bribery that deprives U.S. companies of fair competition or causes them economic injury
 - c. Bribery that threatens U.S. national security risks, specifically in "sectors like defense, intelligence, or critical infrastructure"
 - d. Serious and intentional corruption, such as large bribes, concealment schemes and obstruction rather than conduct that involves low-dollar business courtesies
3. **Broader DOJ Discretion.** Under the new guidelines, the **U.S. Department of Justice** retains discretion to continue or terminate existing cases based on the totality of the circumstances and the new guidelines. The order also carries forward the Executive Order's requirement that "[t]he initiation of all new FCPA investigations or enforcement actions must be authorized by the Assistant Attorney General for the Criminal Division (or the official acting in that capacity) or a more senior Department official."

FCPA Enforcement: Back On

On Feb. 10, Trump issued the Executive Order, which paused the initiation of new FCPA investigations and enforcement actions. The Executive Order also mandated that the DOJ review all existing FCPA matters to ensure they align with Trump's foreign policy objectives and called on the DOJ to issue new enforcement guidelines reflecting the president's foreign policy and economic priorities within 180 days, with a focus on protecting American interests and American economic competitiveness. The Executive Order came after a Feb. 5 order by the attorney general directing the FCPA Unit of the Criminal Division's Fraud Section to focus on foreign bribery that facilitates the criminal operations of cartels and TCOs. Please see our **client alert on Executive Order 14209** for additional information.

While the issuance of new FCPA guidelines indicates that FCPA investigations and enforcement will resume, the DOJ is still carrying out its review of existing FCPA investigations and enforcement actions to make sure they align with the new enforcement priorities.

New Enforcement Priorities: A Deeper Dive

The new FCPA guidelines set forth a non-exhaustive list of factors prosecutors must consider when determining whether to pursue FCPA investigations or enforcement actions. These factors, which shed light the DOJ's enforcement priorities, are as follows:

1. Targeting Cartels and TCOs

The DOJ will prioritize FCPA enforcement involving misconduct associated with the criminal operation of cartels or TCOs. This includes misconduct involving money laundering through shell companies linked to cartels and TCOs or that involving foreign officials who have received bribes from these entities. The emphasis on cartels and TCOs comes after Trump called on the government to revise strategies to pursue the total elimination of cartels and TCOs on Jan. 20 and after Attorney General Pamela Bondi's Feb. 5 order calling on the FCPA Unit of the Criminal Division's Fraud Section to prioritize investigations related to bribery that facilitates the criminal operation of cartels and TCOs.

It is not yet clear how this directive will manifest. Read narrowly, this directive could limit prosecutions to situations where there is a direct link between the corruption of foreign officials and cartels. If so, it would focus on a fairly narrow set of circumstances, the majority of which would not be applicable to most companies. However, read broadly, bribery that facilitates the operation of cartels and TCOs could refer more generally to the bribery of foreign officials in locations where cartels operate – regardless of whether those officials have direct links to cartels or TCOs – under the theory that such corruption creates an environment in which cartels thrive. If the DOJ takes this broader approach, it may increase risk for businesses operating in countries where cartels are present, particularly Mexico.

2. Protecting U.S. Business Interests

Going forward, the DOJ will also focus on misconduct that harms U.S. companies or individuals by depriving them of fair competition. In addition, prosecutors investigating misconduct under the Foreign Extortion Prevention Act, which criminalizes the "demand side" of foreign bribery, should consider whether the foreign official's demand for bribes harmed U.S. companies or individuals. This focus on protecting U.S. business interests reflects the Trump administration's concern that law-abiding companies are often unfairly disadvantaged by their counterparts who engage in foreign bribery.

While the assumption is that this factor means prosecutors will focus on corruption by non-U.S. companies competing with U.S. businesses, the deputy attorney general's memo does not go so far. Instead, the memo expressly states that this enforcement priority does not mean a focus on the nationality of the company or individual involved, but rather whether a U.S. company was harmed by the corrupt act. In theory, a U.S. company that bribes a foreign official while competing with another U.S. company would fall within the scope of this factor.

3. Advancing National Security

Prosecutors will further prioritize investigations into foreign bribery where the misconduct relates to sectors critical to U.S. national security. This includes corruption related to the defense, intelligence or critical infrastructure sectors.

4. Prioritizing Serious Misconduct

Finally, prosecutors are directed to target serious misconduct that involves substantial bribe payments, sophisticated efforts to conceal bribe payments, fraud and efforts to obstruct justice, and focus less on misconduct involving routine business practices or de minimis or low-dollar, generally accepted business practices. In addition, prosecutors are to consider the likelihood that foreign enforcement authorities will investigate and prosecute the misconduct. While the number of DOJ actions centered around gifts, hospitality and entertainment, or small bribe payments, has been limited for the last several years, this factor sends a clear signal that the DOJ is shifting focus moving forward.

5. Additional Considerations

In addition to the above, prosecutors must also consider other policies and relevant factors, including those outlined in the Principles of Federal Prosecution, which require consideration of the nature and seriousness of the offense and the deterrent effect of prosecution. Regardless, prosecutors have discretion to terminate existing actions based on the totality of the circumstances.

Recommendations for Corporate Compliance

Although the factors in the deputy attorney general's memorandum at first blush might appear to be intended to limit or focus FCPA enforcement, they remain quite broad. Most DOJ FCPA enforcement actions over the last decade have involved what could be considered serious misconduct. As noted above, the focus on cartels, U.S. business interests and national security could also implicate a wide range of business activity throughout Latin America. In other words, companies seeking to comply with the FCPA still have a lot of ground to cover.

For certain companies, U.S. and non-U.S. alike, the revised guidelines could mean more scrutiny. In particular, companies operating in sectors critical to U.S. national security (e.g., "sectors like" infrastructure, defense and energy), routinely competing with U.S. companies for international contracts, and operating in countries where cartels or TCOs (including entities designated as Foreign Terrorist Organizations or Specially Designated Global Terrorists) are active should prepare for increased scrutiny and should reassess their corruption risk in light of the DOJ's new enforcement priorities.

At the least, the deputy attorney general's memorandum reaffirms the DOJ's intent that the FCPA will be enforced and provides a framework for understanding how. Companies should accordingly take a fresh look at their assessments of anti-corruption compliance and enforcement risks and consider whether their allocation of always-finite resources and effort is directed at mitigating the risks in DOJ's priority areas.

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