

Insights: Publications

President Trump Hits "Pause" (But Not "Stop"): The Scope of the New Executive Order on The DOJ's FCPA Enforcement Against American Companies

February 11, 2025

Written by Clay C. Wheeler, Hillary D. Rightler,

Key Takeaways:

The Executive Order's 180-day pause on the DOJ's FCPA enforcement does not eliminate many corruption and bribery risks. The Executive Order is limited in that it does not currently affect enforcement by the SEC, private civil lawsuits (including RICO claims and derivative actions), or other non-DOJ anti-bribery and anti-corruption enforcement.

The executive order focuses on the DOJ's FCPA enforcement against American companies operating overseas, and not foreign entities with a U.S. connection. The vast majority of global anti-corruption resolutions, which include alleged FCPA violations, are against foreign companies.

The Executive Order:

Amidst actions concerning federal government spending, the Trump Administration has issued a new executive order pausing what has in recent years been a significant source of revenue for the federal government. On February 10, 2025, President Trump signed an executive order ("EO") "pausing" for 180 days U.S. Department of Justice ("DOJ") enforcement of the Foreign Corrupt Practices Act ("FCPA").^[1] According to the EO, FCPA enforcement against American companies has been "stretched beyond proper bounds and abused in a manner that harms the interests of the United States."^[2] The EO proclaims that "over expansive and unpredictable FCPA enforcement against American citizens and businesses" arising out of "routine business practices in other nations" wastes prosecutorial resources and harms American economic competitiveness, and therefore affects national security and falls within the President's authority under Article II of the Constitution.^[3]

The EO specifically imposes a 180-day period during which the U.S. Attorney General will:

- Review guidelines and policies currently in place governing FCPA investigations and enforcement;
- Cease initiation of any new FCPA investigations and enforcement actions, unless the Attorney General deems there is an exception;
- Review "in detail" all existing FCPA investigations and enforcement actions, and for each determine the "appropriate action...to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives..." and

- Issue updated FCPA guidelines and/or policies that “promote” the President's Article II authority to “conduct foreign affairs and prioritize American interests,” the United States' economic competitiveness with respect to other countries, and efficiency of federal government resources.

After the updated FCPA guidelines and/or policies are issued, the Attorney General must also determine whether they require additional actions, including actions by the President or remedial measures concerning past FCPA actions. The Attorney General is also authorized to extend the pause period for an additional 180 days.^[4]

For years, the U.S. government's interpretation of the statutory language of the FCPA has been expansive. The definitions of the FCPA terms “anything of value” and “foreign official” are broad and can encompass a myriad of scenarios. So much so, the current edition of the *Resource Guide to the U.S. Foreign Corrupt Practices Act* from DOJ and the U.S. Securities and Exchange Commission (“SEC”) runs to 133 pages and includes various examples of scenarios falling within the statute's prohibitions.^[5]

In addition, so-called “books and records” violations of the FCPA are strict liability, making it easier for the DOJ and SEC to obtain FCPA resolutions for those alleged violations.^[6] The fact that the statute does not have a *de minimis* exception and can at least theoretically criminalize what companies believe to be relationship-building efforts or standard procedures outside the United States also complicates compliance efforts.

Despite the issuance of the EO, the following points concerning anti-corruption enforcement still hold true, and underscore the continued need for effective corporate anti-bribery and anti-corruption programs:

- Even though DOJ can change its enforcement priorities and use its discretion concerning the enforcement of any law, the FCPA is still on the books as a viable law, and only Congress can pass modifications to it.
- The EO focuses on enforcement by the DOJ. There is no mention of the SEC and its FCPA enforcement. As mentioned above, the FCPA contains strict liability provisions enforced by the SEC.
- There are also other applicable anti-bribery and anti-corruption statutes affecting multinational companies, including the U.K. Bribery Act, the Canadian Corruption of Foreign Public Officials Act, and applicable criminal laws in Mexico, China, Brazil, Spain, and France.^[7] There are also U.S. state laws that prohibit bribery.
- Investigations into potential FCPA violations often involve other potential federal crimes, including money laundering, wire fraud, tax crimes, Travel Act violations, securities fraud, antitrust violations, bid-rigging, and false statements. The EO does not mention limits on enforcement in those areas.
- Many companies have FCPA-related contractual representations or have otherwise certified that they are in compliance with the FCPA and other applicable anti-bribery and anti-corruption laws. Breaching these agreements and certifications would still have ramifications.
- Private companies and shareholders have avenues for bringing private actions against an entity for bribery and corruption, notwithstanding the EO.
- The EO mentions that it is geared towards protecting American citizens and businesses. But the vast majority of the largest global anti-corruption settlements, most of which included alleged FCPA violations, have involved companies based outside of the United States. Foreign companies who have operations in the United States or are otherwise subject to U.S. jurisdiction should remain vigilant regarding potential future enforcement.

It will be important to monitor DOJ developments, including any updated guidelines and policies promulgated during this pause. Taking these points into consideration, companies should continue to invest in their compliance programs, including any updates or revisions to existing anti-bribery and anti-corruption policies or programs, and continue to conduct internal investigations into activities that may violate the FCPA and other applicable anti-bribery and anti-corruption laws.

Footnotes

[1] Executive Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (February 10, 2025) at <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

[2] *Id.* § 1.

[3] *Id.*

[4] *Id.* § 2.

[5] DOJ and SEC, *A Resource Guide to the U.S. Foreign Corrupt Practices Act, Second Addition* (July 2020) at <https://www.justice.gov/criminal/criminal-fraud/fcpa-resource-guide>.

[6] 15 U.S.C. § 78m(b).

[7] Another example is the Foreign Extortion Prevention Act, which was enacted last year, continues to prohibit foreign government officials from directly or indirectly demanding or accepting bribes. 18 U.S.C. § 201(b)(2).

Related People



Clay C. Wheeler

t 919.420.1717

cwheeler@ktslaw.com



Hillary D. Rightler

t 404.815.6584

hrightler@ktslaw.com