

THOUGHT LEADERSHIP

LEGAL UPDATES

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New Executive Order Directs DOJ to Pause FCPA Enforcement

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On February 10, 2025, President Trump issued an executive order that instructed DOJ to pause all action related to enforcement of the Foreign Corrupt Practices Act (FCPA). Enacted in 1977, the FCPA features anti-bribery provisions which prohibit U.S. companies or individuals from providing or offering to provide payments or things of value to foreign government officials if doing so cause the official to violate their duties or give the payor an improper advantage in obtaining or retaining business. The FCPA also features “books and records” provisions which require public companies to keep accurate books and records and to maintain adequate internal controls related to accounting for transactions involving foreign government officials.

The new order expresses the president’s view that the FCPA may place American businesses at a disadvantage in their dealings overseas, especially related to “critical minerals, deep-water ports, or other key infrastructure or assets.” The order also noted the president’s view that the FCPA has been enforced in “overexpansive and unpredictable” ways, penalizing U.S. businesses for engaging in “routine business practices in other nations.”

Notably, in the next 180 days, the order instructs Attorney General Bondi to (i) not initiate any new FCPA investigations, (ii) review all pending FCPA investigations to ensure they conform with presidential priorities, and (iii) issue new guidelines or policies to promote the president’s “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 order also allows the attorney general to extend the 180-day review period for an additional 180 days, as she sees fit.

The SEC enjoys separate authority to bring civil enforcement actions against public companies for violations of the FCPA's anti-bribery and books and records provisions. The order did not direct the SEC to pause any of its FCPA enforcement efforts, and the SEC currently has not issued any statement or guidance on the matter. As a result, it is unclear how the order will affect public companies with potential FCPA exposure.

We expect that many federal contractors that engage in international business will need to watch developments in this space closely. Forthcoming guidelines from DOJ regarding FCPA enforcement will likely impact contractors' FCPA compliance programs. However, we note that, because many other countries have enacted similar anti-bribery laws (e.g., the U.K.'s Bribery Act, French Criminal Code anti-corruption provisions, the Prevention of Corruption Act (India), and the Prevention of Bribery Ordinance (Hong Kong)), relaxing compliance programs in response to any upcoming shifts regarding FCPA enforcement by DOJ may increase risks under the laws of other nations.

Congress may also take steps to clarify the scope and applications of the FCPA. Affected companies should also be aware that the FCPA's statute of limitations is five years, which could impact future enforcement efforts. In short, we recommend that companies allow these issues to unfold before making any significant changes to FCPA or anti-corruption compliance programs.

Contact us

If you have questions on how this executive order may affect your business, contact Cormac Connor, Grant Leach, Jody Rudman, or your Husch Blackwell attorney.