

# Back in Action: The Trump Administration Lifts “Pause” in Foreign Corrupt Practices Act Enforcement

## Client Alerts

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Approximately four months after President Trump imposed a pause on new Foreign Corrupt Practice Act (FCPA) investigations and enforcement actions, the US Department of Justice (DOJ) has issued new guidelines lifting that pause but laying out its new enforcement priorities. The new FCPA guidelines, along with remarks by acting Criminal Division leader Matthew Galeotti,<sup>[1]</sup> and a May 12, 2025 memo on white-collar enforcement set forth an approach to FCPA enforcement that is explicitly aimed at promoting US economic interests and national security.<sup>[2]</sup>

DOJ’s prior enforcement approach came to an abrupt halt on February 10, 2025, when President Trump signed Executive Order 14209, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (the “Executive Order”),<sup>[3]</sup> which directed DOJ to (1) reevaluate “all existing FCPA investigations or enforcement actions”; and (2) develop policies and guidelines that prioritize American foreign policy and economic interests.<sup>[4]</sup>

Shortly before, on February 5, 2025, Attorney General Pam Bondi, issued a memo titled “Total Elimination of Cartels and Transnational Criminal Organizations”<sup>[5]</sup> ordering, among other things, that federal prosecutors in the FCPA Unit in the Criminal Division’s Fraud Section should prioritize FCPA enforcement involving cartels and TCOs<sup>[6]</sup>, and simultaneously eliminating the FCPA Unit’s exclusive jurisdiction over FCPA matters in such cases. Both the Executive Order and AG Bondi’s memo are discussed in more detail here.

In the wake of those announcements, companies and individuals potentially subject to the FCPA have awaited further information about the future of FCPA enforcement. During that time, DOJ has, in some cases, withdrawn or declined to prosecute cases that were slated to proceed to trial. In others, DOJ has made clear its intention to move forward, suggesting that the DOJ was not entirely abandoning its enforcement of the FCPA. The guidance issued Tuesday provides additional clarity on DOJ’s current priorities, although it also leaves open some important questions.<sup>[7]</sup>

## **Significant Changes: Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act**

On June 9, 2025, Deputy Attorney General Todd Blanche issued a memo titled “Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act.” The four-page memorandum states that its goals are “(1) limiting undue burdens on American companies that operate abroad and (2) targeting enforcement actions against conduct that directly undermines U.S. national interests.” To achieve those goals, the guidelines set forth a non-exhaustive list of factors to guide prosecutors in the initiation of new FCPA investigations or enforcement actions.

### **1. Continued Targeting of Cartels and TCOs**

Initially, the new FCPA guidelines carry forward DOJ’s focus on using the FCPA to target drug cartels and other TCOs. Accordingly, prosecutors are instructed to consider whether the alleged misconduct:

- (1) is associated with the criminal operations of a cartel or TCO;
- (2) utilizes money launderers or shell companies that engage in money laundering for cartels or TCOs; or
- (3) is linked to employees of state-owned entities or other foreign officials who have received bribes from cartels or TCOs.<sup>[8]</sup>

### **2. Using the FCPA to Support US Companies Operating Abroad**

The new guidelines also seek to operationalize the Trump Administration’s commitment to using the FCPA to “vindicate the[] interests” of US businesses abroad.<sup>[9]</sup> The guidelines thus require prosecutors to consider whether the alleged misconduct deprived specific and identifiable US entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals.<sup>[10]</sup> The guidelines explain that prosecutors should not target individuals or companies on the basis of nationality, but rather should identify conduct that undermines US economic interests and national security.

Galeotti’s conference remarks also provide insight into the Justice Department’s interpretation of the jurisdictional reach of the FCPA. He explained that “conduct that genuinely impacts the United States or the American people is subject to potential prosecution by US law enforcement.” He signaled that the Criminal Division “will enforce the FCPA—firmly but fairly—by bringing enforcement actions against conduct that directly undermines US national interests without losing sight of the burdens on American companies that operate globally.” He also explained that conduct that does not implicate US interests should be left to foreign jurisdictions.<sup>[11]</sup>

### **3. Advancing US National Security<sup>[12]</sup>**

The guidelines also explicitly endorse the principle that “American national security depends in substantial part on the United States and its companies gaining strategic business advantages whether in critical minerals, deep-water ports, or other key infrastructure or assets.”<sup>[13]</sup> Accordingly, they instruct prosecutors to focus on cases involving key infrastructure or assets.

#### **4. Prioritizing Investigations of Serious Misconduct**<sup>[14]</sup>

Next, the guidelines state that the government should not penalize American citizens and businesses for “routine business practices in other nations,”<sup>[15]</sup> and thus not “focus on alleged misconduct involving routine business practices or the type of corporate conduct that involves *de minimis* or low-dollar, generally accepted business courtesies.”<sup>[16]</sup> Instead, prosecutors should focus on conduct that “bears strong indicia of corrupt intent tied to particular individuals, such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice.”<sup>[17]</sup> Prosecutors should also consider “the likelihood (or lack thereof) that an appropriate foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct.”<sup>[18]</sup>

#### **5. Additional Considerations**<sup>[19]</sup>

The guidelines note these considerations are not exhaustive and that a myriad of other factors should be considered when determining whether to initiate an FCPA investigation or prosecution. For example, the guidelines specifically mention the Principles of Federal Prosecution, *see* Justice Manual § 9-27.001, *et seq.*, which require consideration of the nature and seriousness of the offenses and the deterrent effect of prosecution, among other factors.

The guidelines also introduce several other changes, such as:<sup>[20]</sup>

- (1) requiring that all new FCPA investigations and enforcement actions must be authorized by the Assistant Attorney General for the Criminal Division or a more senior DOJ official;
- (2) that prosecutors consider any “collateral consequences, such as the potential disruption to lawful business and the impact on a company’s employees” throughout the investigation, not just at the resolution phase;
- (3) that prosecutors shall focus on cases in which individuals “have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures,” and
- (4) that prosecutors should conduct FCPA investigations “as expeditiously as possible.”

#### **What These Changes Mean**

These changes signal that, contrary to some expectations, DOJ is likely to continue to pursue aggressive FCPA enforcement under the Trump Administration—but that enforcement is likely to look different from prior administration priorities in certain key ways. Certain factors listed in the new guidelines are consistent with prior DOJ practice; for example, a matter involving “substantial bribe payments” by a foreign corporation to obtain access to valuable natural resources would likely have been pursued under any administration; conversely, a matter involving payment of “*de minimis*” “business courtesies” would likely not have been pursued under prior administrations. What appears new is the apparent suggestion that DOJ will focus overly and intently on bringing cases that advance US business interests abroad. Prior administrations also emphasized the role of the FCPA in advancing US interests but did so by articulating the harms of corrupt conduct both to free competition and to US allies overseas, rather than by focusing more narrowly—as the new guidelines suggest DOJ may do—on benefits to American companies.

Distilling those statements, businesses that either (1) operate in high risk-environments dominated by organized criminal activity or associated with drug trafficking or (2) are perceived to be competitors to American economic or foreign-policy interests are more likely to be targets of FCPA enforcement. We should expect to see increased FCPA enforcement for companies that operate in Mexico, China, and other countries that have been historical targets of FCPA enforcement actions.

In that sense, the new guidelines’ overt focus on US interests may benefit American businesses in certain circumstances, but it also may carry risks. Foreign jurisdictions have long complained that the United States used the FCPA as a tool of protectionism. Cementing the notion that DOJ will use the statute to target foreign companies and protect American ones may encourage reciprocal approaches by foreign regulators. As we discussed in our recent client alert<sup>[21]</sup>, European states have enacted anti-bribery legislation with extraterritorial reach. For example, in early April 2025, the Director of the UK Serious Fraud Office (SFO) explained that the SFO would seek to investigate US bribery allegations where the United States was not in the position to do so.<sup>[22]</sup> And in March 2025, the United Kingdom, Switzerland, and France established the International Anti-Corruption Prosecutorial Taskforce.<sup>[23]</sup> Though membership is presently limited to the three founding members, its founding statement sets the stage for “other like-minded agencies involved in tackling international bribery and corruption to join the Taskforce”<sup>[24]</sup>—and there has been some suggestion that other international law enforcement agencies are interested in doing so.

As we have noted before, companies also need to be mindful of the Securities and Exchange Commission’s (SEC) overlapping FCPA jurisdiction. It is still unclear whether the SEC will promulgate its own guidelines or whether it will adopt DOJ’s guidelines for FCPA enforcement. In addition, even businesses that believe themselves outside of the Trump Administration’s focus should be careful before relaxing their FCPA compliance programs. Companies should remain mindful of the FCPA’s five- and six-year statutes of limitations for substantive violations and violations of the accounting provisions, respectively, and note that in certain circumstances the statute of limitations is subject

to lengthy tolling.<sup>[25]</sup> It is thus likely that many cases considered under the current guidelines may also be subject to reconsideration by a future administration. Jenner & Block lawyers have experience navigating FCPA enforcement and investigations and can help your company navigate this shifting landscape. It is important to ensure that outside counsel is engaged to assess the health of your compliance program.

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## Footnotes

[1] On the same day that the new FCPA guidelines were issued, Galeotti delivered remarks at the American Conference Institute Conference on Global Anti-Corruption, Ethics & Compliance related to the new FCPA guidelines and the broader May 12, 2025 white-collar enforcement guidelines. Galeotti emphasized that the guidelines provide a non-exhaustive list of factors and evaluation criteria for FCPA enforcement. He characterized these guidelines as a step towards “the vindication of US interest.”

[2] The May 12, 2025 memo on white-collar enforcement outlines the Criminal Division’s enforcement priorities and policies for prosecuting corporate and white collar-crime. It has several overlapping themes with the new FCPA guidelines: (1) a focus on protecting US interests by limiting the burdens/harms from white-collar investigations and prosecutions; (2) a focus on Chinese companies; (3) a focus on Cartels and Transnational Criminal Organizations (TCOs); (4) and a shift towards prosecuting individuals instead of assigning the malfeasance to companies. *See* US Department of Justice, Criminal Division, “Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime” (May 12, 2025).

[3] For more information on the Executive Order, please see: Jenner & Block, “Client Alert: The Trump Administration Calls for a Pause on New FCPA Enforcement, but Don’t Abandon Compliance Programs Just Yet” (Feb. 14, 2025).

[4] *See* Executive Order 14209, “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security,” Sec. 2 (Feb. 10, 2025).

[5] Office of the Attorney General, “Total Elimination of Cartels and Transnational Criminal Organizations” (Feb. 5, 2025).

[6] TCOs refer to organized crime coordinated across national borders, involving groups or markets of individuals working in more than one country to plan and execute illegal business ventures. *See* Yuriy A. Voronin, “Measures to Control Transnational Organized Crime,” Summary, Nat’l Criminal Just. Reference Serv., U.S. Dep’t of Just., NCJ No. 184773, (2000).

[7] Often more important than stated policy objectives, staffing (for FCPA) remains an open question. The Trump Administration’s priorities may be more obviously reflected in whether the resources for bringing FCPA cases remain within the DOJ or if they have been diverted to other more pressing concerns. This includes the need for a clearer understanding of the number of trial lawyers in the FCPA Unit itself, the support of detailees to the Unit, and the capacity for bringing these cases at the 93 US Attorney’s Offices around the country.

[8] *See* Office of the Attorney General, “Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)”, Sec. 1(A) (June 9, 2025).

[9] *Id.*, Sec. 1(B).

[10] The memo also instructs prosecutors in conducting investigations and prosecutions under the Foreign Extortion Prevention Act, 18 U.S.C. § 1352, which criminalizes the “demand side” of foreign bribery, to consider whether specific and identifiable US entities or individuals have been harmed by foreign officials’ demands for bribes.

[11] *Supra* note 1.

[12] *Supra* note 7, Sec. 1(C).

[13] *Id.*, quoting Executive Order §1.

[14] *Supra* note 7, Sec. 1(D).

[15] *Id.*, quoting Executive Order §1.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Supra* note 7, Sec. 2.

[20] *Supra* note 7 at 1.

[21] Jenner & Block, “Client Alert: The Case for Compliance: Why UK and EU Businesses Should Continue to Invest in Their Compliance Programs” (Mar. 24, 2025).

[22] Law 360 UK, “Ephgrave Eyes Covert Tactics To Fix Drop in Self-Reporting” (April 3, 2025).

[23] GOV.UK, “UK, France and Switzerland announce new anti-corruption alliance” (Mar. 20, 2025).

[24] International Anti-Corruption Prosecutorial Taskforce, Founding Statement (Mar. 20, 2025).

[25] 18 U.S.C. § 3292

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