

Should Your Company Shut Down Its Anti-Corruption Compliance Program and Start Paying Bribes? Here Are a Few Reasons to Think Twice Before Doing So.

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On February 10, 2025, President Trump issued a new Executive Order (“EO”) titled “Pausing Foreign Corrupt Practice Act Enforcement to Further American Economic and National Security.” This EO comes on the tail of Attorney General Pam Bondi’s memorandum titled “Total Elimination of Cartels and Transnational Criminal Organizations” (“Bondi Memo”), published on February 5, 2025. Companies looking at the EO and Bondi Memo likely have many questions about the future enforcement of the Foreign Corrupt Practices Act (“FCPA”), including whether anti-corruption compliance programs are worth the expense and effort. For several reasons, we suggest that continued commitment to diligent anti-corruption compliance is likely in your company’s best long-term interest.

1. Regardless of President Trump’s and AG Bondi’s FCPA enforcement priorities, the FCPA is still in effect and prohibits bribery of foreign government officials.
 - a. Neither the EO or Bondi Memo has any impact on the FCPA as law.
 - i. The EO (issued February 10, 2025) directs that for 180 days (or up to 360 days at AG Bondi’s discretion), AG Bondi will:
 1. cease initiation of new FCPA investigations or enforcement actions unless an exception is warranted;
 2. review existing FCPA investigations and enforcement actions and “take appropriate action . . . to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives; and
 3. issue updated investigation and enforcement guidelines or policies to effectuate the President’s stated interests in helping American companies gain “strategic business advantages whether in critical minerals, deep-water ports, or other key infrastructure or assets” and “eliminating excessive barriers to American commerce abroad.
 - ii. The Bondi Memo (issued on February 5, 2025 and summarized in this eUpdate), indicates that FCPA investigations and enforcement actions should be limited essentially to those involving drug and human trafficking, or other activities of transnational criminal organizations (“TCOs”).

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- b. The statute of limitations for a standard anti-bribery FCPA offense is 5 years and a standard accounting violation is 6 years, with possible tolling extending the limitations period an additional 3 years. See 18 U.S.C. §§ 3282, 3292, 3301.
 - c. Bribery by a company often leaves an evidentiary trail, through bank accounts, accounting records, and the employees and other people involved, leaving a risk that corrupt activity that occurs during this administration may be identified and/or face enforcement activity in subsequent administrations.
- 2. The SEC has not (yet) indicated that it is changing its FCPA enforcement priorities. U.S. and foreign companies that trade shares on U.S. exchanges thus remain subject to SEC jurisdiction and the books and records and internal controls provisions of the FCPA.
- 3. Many agreements that companies have entered into and will be asked to enter into include “compliance with all laws” provisions and/or express certifications of compliance with the FCPA and other applicable anti-bribery laws. Failure to adhere to those agreements may expose companies to litigation risk.
 - a. Even with a shift in FCPA enforcement priorities in the U.S., many global companies will remain subject to foreign anti-corruption and anti-money laundering regimes and the enforcement policies of foreign authorities. Many of these authorities, including the French Parquet national financier and the U.K. Serious Fraud Office, have been increasingly active in recent years and may redouble their efforts in light of any perceived decrease in U.S. enforcement.
- 4. Many companies’ leader statements and anti-corruption compliance programs express a commitment to doing business ethically and in compliance with all laws.
 - a. A shift in tone at the top or in resources dedicated to compliance may negatively impact company culture and morale.
 - b. Such shifts may also trigger scrutiny by a subsequent administration with different enforcement priorities.
- 5. In addition to fueling inequality, market distortions, and distrust in public institutions, public corruption can increase the cost of doing business and put employees’ safety at risk.
 - a. Bribery can be expensive, particularly when foreign governments feel free to extract significant bribes for significant government contracts.
 - b. We often advise clients that one reason to avoid paying the first bribe in a country is because the next one will be more expensive. Paying a port authority official who holds up a shipment of goods, or a local police officer who denies access to a plant, may take care of the immediate access issue, but once a government official sees you are willing to pay a bribe, they often will come back repeatedly, and with increasing demands over time.
- 6. Companies with operations in certain areas that are at higher risk of cartel and TCO activity—particularly those in Latin America—should assess their anti-corruption and anti-money laundering policies and procedures with an eye toward any risk related to cartels and TCOs, which the Bondi Memo identifies as key enforcement priorities. While the government has not yet defined either “cartel” or “TCO,” the Bondi Memo highlighted activities including human smuggling, narcotic trafficking, and firearm trafficking, which could theoretically arise in a wide variety of contexts.
- 7. In time, we expect the government to issue a revised version of its Resource Guide to the U.S. Foreign Corrupt Practice Act, which is a joint publication by the DOJ and SEC that was last updated in July 2020. Although the timing of any update is uncertain, the EO instructed the Attorney General to “review guidelines and policies

governing investigations and enforcement actions under the FCPA” within 180 days (*i.e.*, August 9, 2025), with an extension of an additional 180 days (*i.e.*, February 5, 2026) if the Attorney General deems appropriate.