

Trump Second Term: Legal Tracker

TRUMP ISSUES EXECUTIVE ORDER FREEZING FCPA ENFORCEMENT AND INVESTIGATIONS FOR 180 DAYS

BONDI'S DOJ SHIFTS PRIORITIES RESULTING IN LESS FOCUS ON CORPORATE FCPA AND KLEPTOCRACY-RELATED MONEY LAUNDERING ENFORCEMENT AND LESS FARA AND SANCTIONS ENFORCEMENT

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On February 10, 2025, President Trump issued an Executive Order directing the Attorney General for a 180-day period to:

- “cease initiation of any new FCPA investigations or enforcement actions, unless the Attorney General determines that an individual exception should be made;”
- review all existing FCPA investigations and take action to resolve them in keeping with Trump’s foreign policy objectives; and
- issue new guidelines for FCPA enforcement in the future that “prioritize American interests, American economic competitiveness with respect to other nations” and promote the efficient use of Federal law enforcement resources.

This period can be extended another 180 days by the Attorney General. The Executive Order also provides that the new guidelines will cover every new investigation and that any new investigation must be approved by the Attorney General herself. Finally, it provides that after the new guidelines are in place, it allows for “remedial measures with respect to inappropriate past FCPA investigations and enforcement actions.”

As if anticipating the Executive Order issued by President Trump, on her first day as United States Attorney General, on February 5, Pam Bondi issued several memos to all Department of Justice employees setting forth the new priorities for the DOJ, including the “*total elimination* of Cartels and Transnational Criminal Organizations (TCOs).” After removing “bureaucratic impediments” to some specific kinds of prosecutions (capital crimes, terrorism, IEEPA, and racketeering), one memo then targets two of the DOJ’s most successful prosecutorial units: FCPA and money laundering. Under the new priorities, those units will focus on investigations of violations of those statutes that involve Cartels and TCOs.

Although, the memo supposedly removed barriers to FCPA prosecutions that previously required all such investigations and prosecutions to be authorized by the Criminal Division and conducted by members of the Fraud Section of DOJ, in reality, the Executive Order now countermands that by requiring any FCPA investigation to be approved by the Attorney General herself.

As to the Money Laundering Section, the memo officially disbands the Task Force KleptoCapture, the Department's Kleptocracy Team and the Kleptocracy Asset Recovery Unit. These units, which investigated and prosecuted, among other things, violations of the Russian sanctions laws, were highly successful in recovering property stolen from national governments and property owned by sanctioned individuals and entities.

On the same day, AG Bondi issued another memo that shifted priorities and resources towards the prosecution of immigration and human trafficking and smuggling offenses, as well as prosecuting TCOs, cartels and gangs. The memo immediately disbands the Foreign Influence Task Force and the National Security Division's Corporate Enforcement Unit and limits enforcement of the Foreign Agents Registration Act (FARA) to "instances of alleged conduct similar to more traditional espionage by foreign government actors." Consequently, the memo states, "the Counterintelligence and Export Control Section, including the FARA Unit, shall focus on civil enforcement, regulatory initiatives, and public guidance."

WHAT WILL THESE CHANGES MEAN IN REALITY?

Prior to the Executive Order, some commentators had pointed out that because most FCPA cases come to DOJ because they are voluntarily disclosed or are from foreign law enforcement, those cases will continue to arise and be investigated by the DOJ. Therefore, those commentators did not believe there will be much effect on FCPA enforcement.

The Executive Order and these changes, however, clearly reflect highly personal beliefs that President Trump appears to hold dear. He has been on record for a long time that he believes the FCPA should be changed. In a 2012 interview, Trump stated about the FCPA that "It's a horrible law and it should be changed." He also stated that the U.S. should not prosecute companies that are "getting business and creating jobs in this country." He has now done to the FCPA what he has wanted to do for a very long time. And given the memos that Bondi issued, he has a willing Attorney General to ensure that his wishes are executed.

The changes to FARA enforcement and sanctions enforcement also appear to be issues near to the President. Members of his previous and now nominees for current Administration positions have been accused of FARA violations. And as far as Russian sanctions go, while President Trump's use of the threat of sanctions as a bargaining tool is well-established, so too is his closeness with Russian President Putin.

That does not mean that companies should ignore the FCPA and sanctions laws or dial back on their anti-corruption compliance programs. The FCPA and export controls/sanctions are still the law of the land and violations of them carry significant penalties. Further, in the case of export control and sanctions laws, the administering agencies continue to have the ability to bring civil enforcement actions which also carry significant monetary penalties (and which can be assessed on a strict liability basis). Good corporate citizenship requires adherence to all laws, whether they are enforcement priorities or not. And practically speaking, the statute of limitations for the FCPA is five years (that can be extended three additional years for gathering foreign information) and for sanctions violations ten years, which means the next Administration may take a different view. Moreover, other nations, including the UK and France, are ramping up their anti-corruption enforcement efforts and U.S. companies can get dragged into their investigations.

BCLP has the depth and experience to assist in the preparation of anti-corruption, export control and sanctions compliance programs and the investigation and defense of any potential violations of these laws and regulations.

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