



ADVISORS

FCPA ENFORCEMENT : COMPLIANCE “AS USUAL”?

Prevailing wisdom is that the Trump administration has thrown a monkey wrench into the outlook for robust corporate compliance through the February 10, 2025 Executive Order pausing Foreign Corrupt Practices Act (FCPA) enforcement actions and investigations and the ensuing applications to suspend at least three FCPA-related prosecutions. These developments have worked law firms and other business advisors, many of which have invested heavily in building extensive anti-corruption practices, into a tizzy. They warn that companies should not mis-read, or overreact to, this situation, as the FCPA is alive and well (if more limited) and businesses do not now have license to neglect anti-corruption compliance.

They make various points to encourage companies to keep their feet firmly on the compliance accelerator, including:

- The FCPA is still binding, and enforcement can be re-invigorated at any time;
- Egregious cases likely will be pursued no matter the administration’s enforcement philosophy;
- The Executive Order focuses on the impact of FCPA enforcement on U.S. interests and competitiveness and “American companies” and does not necessarily alter U.S. enforcement priorities regarding non-U.S. businesses;
- Even if the DOJ currently de-prioritizes FCPA enforcement, U.S.-listed companies and their personnel also can be exposed to FCPA scrutiny and liability by the Securities and Exchange Commission;
- Given the five-year statute of limitations for FCPA violations and the long “tail” for many bribery situations, exposure to the FCPA likely will outlast the Trump administration or its current perspective;
- Other federal and state U.S. laws (e.g., wire fraud) whose enforcement priorities have not changed, also proscribe much of the conduct at issue in FCPA matters;
- Nearly every other country (including the U.K. and all other OECD member states) has laws similar to the FCPA to which companies and their personnel can be exposed even with limited jurisdictional nexus; and
- Anti-corruption efforts also support anti-fraud and internal misconduct prevention.

All true! Lost in this race to preserve anti-corruption compliance focus and efforts, however, is recognition of the opportunities that this “breathing room” creates for companies to assess and possibly re-orient the ways in which they conduct anti-corruption compliance. Businesses can use this hiatus to begin to re-evaluate whether their anti-corruption (and broader compliance controls) both effectively and efficiently achieve their intended objectives. Management can consider, on its own and with the help of advisors, whether the company is optimizing existing compliance resources, including whether it is striking the right balance between internal assets and external advisors. The temporary removal of the Sword of Damocles of FCPA prosecution from atop executives’ heads provides a meaningful occasion for constructive reflection, not tea leaf gazing as to what the enforcement future will be.

Admonitions by the white-collar establishment that there should be “business as usual” when it comes to ongoing compliance efforts seem to have lost sight of the opportunities recent U.S. enforcement developments have created for companies to re-think what “usual” means and how best to achieve it.