

Client Alert

Special Matters & Government Investigations

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A New Era of FCPA Enforcement

INTRODUCTION

On June 9, 2025, Deputy Attorney General Todd Blanche issued a memorandum (the “Blanche Memorandum”) detailing new guidelines for the Department of Justice’s approach to investigating and enforcing the Foreign Corrupt Practices Act (“FCPA”).¹ The Blanche Memorandum followed an executive order issued by President Trump in February, which directed DOJ to cease the initiation of any new FCPA investigations or enforcement actions, conduct a review of all existing matters, and issue guidelines for future FCPA enforcement by the Department.²

The Blanche Memorandum states that the guidelines’ primary purposes are to (1) limit undue burdens on American companies operating abroad and (2) target enforcement actions against conduct that directly undermines U.S. national security interests.³ The memorandum directs DOJ prosecutors to consider four non-exhaustive factors when evaluating whether to pursue FCPA investigations and enforcement actions, including whether the alleged misconduct (1) is associated with the criminal operations of a cartel or transnational criminal organization (“TCO”); (2) deprived specific and identifiable U.S. entities or individuals of fair access to compete; (3) bears strong indicia of corrupt intent; and (4) involves a threat to national security.⁴

This Alert discusses the guidance set forth in the Blanche Memorandum and our takeaways regarding its potential implications for FCPA enforcement.

EXECUTIVE ORDER PAUSING FCPA ENFORCEMENT

President Trump’s February 10, 2025 executive order paused most FCPA enforcement for 180 days and directed the Department to update guidelines or policies to prioritize American interests.⁵ Absent an exception personally approved by the Attorney General, the executive order required the Department to refrain from launching new investigations or filing enforcement actions until such guidelines were issued.⁶ The order cited “overexpansive and unpredictable FCPA

enforcement against American citizens and businesses” as penalizing “routine business practices in other nations” and thereby “harm[ing] American economic competitiveness.”⁷

The order followed a memorandum issued by Attorney General Pam Bondi on February 5, which called for a “fundamental change in mindset and approach” in pursuit of “total elimination of Cartels and Transnational Criminal Organizations (TCOs).”⁸ Attorney General Bondi’s February 5 memorandum specifically called for the FCPA Unit of the Criminal Division to “prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs,” while “shift[ing] focus away” from other foreign bribery allegations unrelated to cartels and TCOs.⁹

DETAILS OF NEW GUIDELINES

The Blanche Memorandum requires prosecutors to focus their efforts (1) on individuals engaging in criminal misconduct, rather than corporate entities; (2) on investigating “expeditiously;” and (3) with regard to the potential collateral consequences of an investigation.¹⁰ As mentioned above, the guidelines direct prosecutors to consider the following “non-exhaustive” set of factors in evaluating whether to pursue FCPA investigations and enforcement actions.

PRIORITIZING THE ELIMINATION OF CARTELS AND TCOS

First, in line with President Trump’s designation of cartels as foreign terrorist organizations and specially designated global terrorists¹¹ and the current administration’s overarching prioritization of the total elimination of cartels and TCOs,¹² the Blanche Memorandum directs prosecutors to consider whether investigating a potential FCPA violation aligns with this priority. Specifically, prosecutors now are required to consider whether the alleged misconduct:

- Is associated with criminal operations of a cartel or TCO;
- Leverages money launderers or shell companies associated with cartels or TCOs; or
- Is linked to employees of state-owned entities or other foreign officials who received bribes from cartels or TCOs.¹³

SAFEGUARDING AMERICAN INTERESTS AND OPPORTUNITIES

Second, the Blanche Memorandum directs prosecutors to focus on misconduct that puts U.S. companies and American interests “at a serious economic disadvantage.”¹⁴ Citing the importance of economic growth and U.S. companies’ competitiveness abroad as “critical to safeguarding U.S. national security and economic prosperity,” the memorandum notes that “corrupt competitors” who bribe foreign officials to make illicit profits “skew markets and disadvantage law-abiding U.S. companies and others for many years.”¹⁵

Accordingly, the Blanche Memorandum emphasizes that the DOJ’s FCPA enforcement efforts should “seek to vindicate these interests . . . by identifying and prioritizing the investigation and prosecution of conduct that most undermines” American interests and opportunities, rather than focusing on individuals or companies “on the basis of their nationality.”¹⁶ The memorandum requires prosecutors to consider whether the alleged misconduct caused harm to “specific and identifiable American companies or individuals.”¹⁷ Matthew Galeotti, Head of the Criminal Division, emphasized this point in remarks that he delivered after the release of the Blanche Memorandum, saying that “[i]t is not about the nationality of the subject or where the company is headquartered,” thus signaling that U.S. companies are not immune from FCPA enforcement if their conduct violates these principles.¹⁸

Notably, the memorandum references the Foreign Extortion Prevention Act (“FEPA”),¹⁹ which “criminalizes the ‘demand side’ of foreign bribery,” and requires prosecutors to consider whether foreign officials’ demands for bribes

have injured U.S. interests.²⁰ This, in conjunction with a footnote stating that “the most significant FCPA enforcement actions . . . have been overwhelmingly brought against foreign companies,”²¹ suggests that the Department will leverage the FEPA as well as the FCPA as enforcement tools to target situations where foreign officials demand bribes from foreign companies (which are U.S. issuers or otherwise exposed to the U.S.), or when foreign companies pay bribes, in a manner that disadvantages compliant U.S. companies.

ADVANCING NATIONAL SECURITY

Third, the Blanche Memorandum directs DOJ prosecutors to focus their FCPA enforcement efforts on matters that involve threats to U.S. national security interests, specifically citing the defense, intelligence, and critical infrastructure sectors. Noting that corruption that occurs in these sectors poses increased risks to American national security, the memorandum states that FCPA enforcement will focus on “the most urgent threats to U.S. national security resulting from the bribery of corrupt foreign officials involving key infrastructure or assets.”²² As a result, companies operating in these industries should expect heightened scrutiny and enforcement attention.

PRIORITIZING INVESTIGATION OF SERIOUS MISCONDUCT

Finally, in alignment with the February 10 Executive Order, the Blanche Memorandum notes that prosecutors should avoid focusing on misconduct involving “routine business practices” or corporate conduct involving de minimis or low value “generally accepted business courtesies.”²³ Instead, the memorandum states that FCPA enforcement will focus on conduct bearing “strong indicia of corrupt intent tied to particular individuals,” listing the following as examples:

- Substantial bribes;
- “Proven and sophisticated” concealment efforts;
- Fraudulent conduct that furthers the bribery scheme; and
- Efforts to obstruct justice.²⁴

The memorandum’s directive for enhanced focus on “serious” misconduct suggests that the Department will raise the bar for materiality and target misconduct meeting a higher threshold of severity when initiating investigations under the FCPA.

LOOKING FORWARD – POTENTIAL ENFORCEMENT IMPLICATIONS

The newly issued guidance signals that the Department’s FCPA enforcement efforts will focus on leveling the playing field for U.S. businesses operating and competing overseas. Potential enforcement implications going forward include the following:

- An emphasis on prioritizing misconduct that undermines U.S. companies, not only as a law enforcement tool, but also in furtherance of the Administration’s “America First” foreign policy.
- The prioritization of investigations involving foreign bribery that facilitates the operation of cartels and TCOs.²⁵ Notably, these efforts will coincide with enforcement of the Anti-Terrorism Act against designated Latin American cartels and any person or company providing “material support.”
- A focus on targeting conduct that affects U.S. national security interests in industries such as defense, intelligence, and infrastructure.

- A heightened materiality threshold for initiating FCPA investigations where the alleged misconduct involves substantial payments or bears “strong indicia of corrupt intent” to avoid penalizing routine business practices abroad.
- A significant likelihood that this guidance will also inform the Securities and Exchange Commission’s approach to civilly enforcing the FCPA.²⁶
- Increased instances where the DOJ defers to investigations concerning conduct outside the announced priorities when conducted by foreign authorities or U.S. regulators, including the SEC.²⁷
- Fewer cases being investigated by the Criminal Division’s FCPA Unit, in light of significant reductions in headcount. The Attorney General has indicated her intent to offset this decrease at the Criminal Division by empowering the U.S. Attorneys’ Offices to pursue FCPA investigations without Criminal Division authorization.²⁸

Although the new guidance may give companies with pending investigations an opportunity for favorable engagement with the government, it remains critically important to remain committed to a focus on FCPA compliance. This is especially true for foreign companies potentially subject to the FCPA that are competing with U.S. firms and companies.

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¹ See Memorandum, Guidelines for Investigations & Enforcement of the Foreign Corrupt Practices Act (FCPA) (June 9, 2025), <https://www.justice.gov/dag/media/1403031/dl>.

² Exec. Order, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security (Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/>.

³ See *id.*

⁴ See *id.*

⁵ Exec. Order, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security, *supra* note 2.

⁶ See *id.*

⁷ *Id.*

⁸ Memorandum, Total Elimination of Cartels and Transnational Criminal Organizations to all Dep't of Justice Emps. (Feb. 5, 2025), <https://aboutblaw.com/bg8D>.

⁹ *Id.*

¹⁰ See Memorandum, Guidelines for Investigations & Enforcement of the Foreign Corrupt Practices Act (FCPA), *supra* note 1.

¹¹ See Designating Cartels & Other Organizations As Foreign Terrorist Organizations & Specially Designated Global Terrorists, WHITE HOUSE (Jan. 20, 2025); <https://www.whitehouse.gov/presidential-actions/2025/01/designating-cartels-and-other-organizations-as-foreign-terrorist-organizations-and-specially-designated-global-terrorists/>.

¹² See *supra* text accompanying notes 8–9.

¹³ Memorandum, Guidelines for Investigations & Enforcement of the Foreign Corrupt Practices Act (FCPA), *supra* note 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Press Release, Head of Just. Dept's Criminal Division Matthew R. Galeotti Delivers Remarks at American Conference Institute Conference (June 10, 2025), <https://www.justice.gov/opa/pr/head-justice-departments-criminal-division-matthew-r-galeotti-delivers-remarks-american>. Discussing the Division's approach to tackling white collar crime under the new administration, Galeotti noted that the key takeaway of the guidelines is "vindication of U.S. interests" and noted that conduct that does not implicate U.S. interests "should be left to our foreign counterparts or appropriate regulators."

¹⁹ See 18 U.S.C. § 1352.

²⁰ Memorandum, Guidelines for Investigations & Enforcement of the Foreign Corrupt Practices Act (FCPA), *supra* note 1.

²¹ *Id.*, n.4.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ We also expect to see a geographic focus on companies with operations in Mexico. See Christine Savage et al., *Recent FTO Designations Raise FCA Liability Concerns for Multinational Organizations*, King & Spalding (Mar. 31, 2025), <https://www.kslaw.com/news-and-insights/recent-fto-designations-raise-fca-liability-concerns-for-multinational-organizations> (noting that designations of Mexican cartels and TCOs as foreign terrorist organizations and specially designated global terrorists "creates a new risk that businesses operating in areas where those entities are active, particularly Mexico, could be investigated and prosecuted for materially supporting those entities."); Brandt Leibe et al., *State Criminal and Civil Liability for Material Support: How the FTO Designation of Drug Cartels Increases the Risk of State Enforcement*, King & Spalding (Mar. 11, 2025), <https://www.kslaw.com/news-and-insights/state-criminal-and-civil-liability-for-material-support-how-the-fto-designation-of-drug-cartels-increases-the-risk-of-state-enforcement> (noting that designations of Mexican drug cartels and TCOs creates "serious new risks for businesses operating in Latin America, especially Mexico.") (emphasis added).

²⁶ See Andrew C. Hruska et al., *Trump Administration Limits Criminal Enforcement of the Foreign Corrupt Practices Act*, King & Spalding (Feb. 12, 2025), <https://www.kslaw.com/news-and-insights/trump-administration-limits-criminal-enforcement-of-the-foreign-corrupt-practices-act>.

²⁷ Press Release, Head of Just. Dept's Criminal Division Matthew R. Galeotti Delivers Remarks at American Conference Institute Conference, *supra* note 19.

²⁸ Memorandum, Total Elimination of Cartels and Transnational Criminal Organizations to all Dep't of Justice Emps. (Feb. 5, 2025), at 4, <https://aboutblaw.com/bg8D>.