

NAVIGATING ANTI-CORRUPTION EFFORTS DURING THE FCPA ENFORCEMENT PAUSE

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Legal and compliance departments face ongoing challenges as regulations evolve. Effective investigations, anti-corruption, and trade compliance procedures are essential tools — not just for regulatory compliance, but for maintaining organizational integrity and managing risk. On February 10, 2025, the new U.S. administration suspended Department of Justice (DOJ) Foreign Corrupt Practices Act (FCPA) enforcement actions for 180 days. The DOJ did eventually lift the enforcement suspension on June 9, but there's no guarantee they will continue to operate similarly in the future.

Before we proceed further, let's review the statute. The FCPA is the U.S. anti-bribery law that forbids offering or giving anything of value to a foreign government official (FGO) to obtain or retain a business

advantage. The FCPA applies to companies whether they make payments directly or indirectly through third parties.

FCPA suspension

The new administration suspended the DOJ's FCPA enforcement actions to review historical and current actions to determine if they are in line with foreign policy objectives. The White House stated that DOJ's FCPA enforcement actions may negatively affect U.S. businesses from international competition: "Strategic advantages in critical minerals, deep-water ports, and other key infrastructure or assets around the world are critical to American national security."¹

The attorney general stated in a memo dated February 5, 2025, that the FCPA enforcement should focus on bribery related to cartels and transnational criminal organizations

(TCOs), such as weapons smuggling and human trafficking.²

The memo also allows U.S. attorneys the ability to investigate allegations of violations of the FCPA and Foreign Extortion Prevention Act (FEPA) related to TCOs and drug cartels without authorization or oversight from the DOJ Fraud Section (only a 24-hour written notice). Also in February 2025, the Department of State designated several drug cartels as Foreign Terrorist Organizations (FTOs) such as the *Cártel de Sinaloa*, *Cártel de Jalisco Nueva Generación*, and several others.³

What are the implications for corporate ABC programs?

There are numerous reasons why corporations should continue to enhance their anti-bribery and corruption (ABC) programs and thoroughly investigate allegations of corrupt activity, despite temporary priority shifts by DOJ and other regulatory enforcement agencies. I will mention several, but I am sure there are many other reasons that provide further justification.

DOJ and other federal agencies have a broad array of statutes to prosecute fraud and corruption, such as anti-money laundering laws, mail and wire fraud statutes, FEPA, the Sarbanes–Oxley Act, and the FCPA, which remains in effect.

During periods where DOJ policies and guidelines are reassessed, the FCPA's five-year statute of limitations means that prosecutions could resume for violations occurring within that window if enforcement is reinstated by the current or a future administration.

During the first Trump administration (2017–2020), FCPA enforcement was robust, resulting

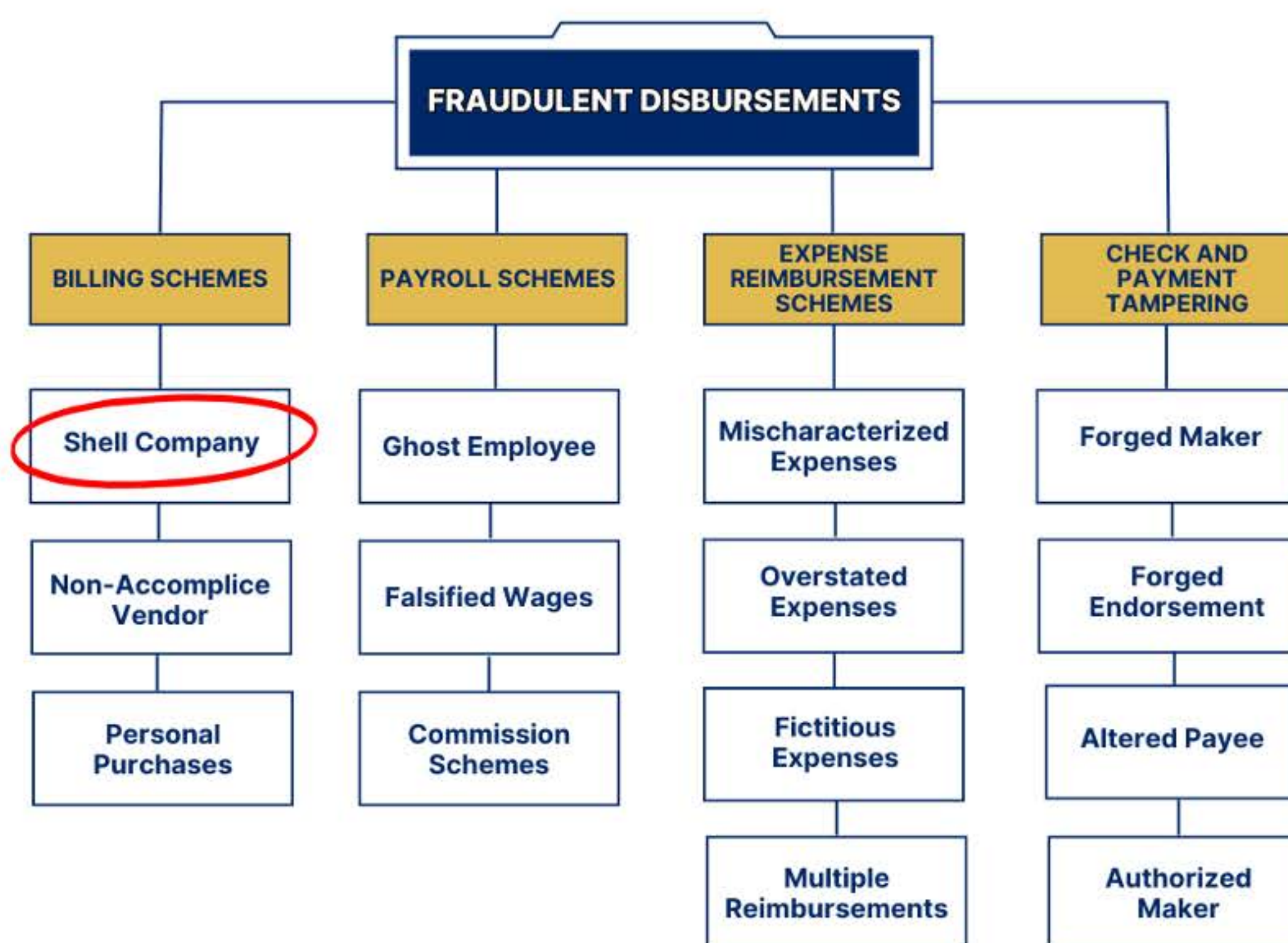
in \$13.9 billion in sanctions from 164 enforcement actions — a significant source of government revenue that could motivate renewed enforcement once the review concludes.^{4, 5}

The U.S. Securities and Exchange Commission (SEC) whistleblower program continues to thrive. According to the SEC 2024 report, the SEC paid out \$255 million to 47 whistleblowers. Although that is a decrease from 2023, it is the third highest year in dollar amounts paid since the program's inception in 2011.⁶ In August 2024, DOJ implemented a similar program called the "U.S. Department of Justice Corporate Whistleblower Awards Pilot Program," which rewards whistleblowers that report corporate misconduct, domestic and foreign corruption issues, and financial institution and healthcare fraud. There are notable differences

and similarities in each but without overlapping rewards.⁷ The new administration might "think twice" before it ignores legitimate whistleblowers' reports, especially if they might include TCOs or FTOs.

Other countries in the last decade have implemented more stringent ABC laws and — more importantly — are enforcing them aggressively. Examples include the UK Bribery Act, the Brazilian Clean Company Act (enacted in 2013 and revised in 2015 and 2022), and Chinese ABC laws (amended in 2023 to increase penalties imposed on "bribe givers").⁸ Despite limited UK foreign bribery convictions, there have been an increase in non-prosecution agreements and domestic bribery cases. The Chinese government in the last several years has put pressure on companies in several industry sectors, including

Figure 1: Bribery scheme examples



Note: Figure 1 published with permission from the Association of Certified Fraud Examiners.

healthcare. Chinese companies must undergo periodic audits and demonstrate that they have robust internal control mechanisms and procedures in place to detect and prevent fraud and corruption. In our third-party FCPA audits, we observed that Chinese government-controlled entities have compliance programs dedicated to dealing with the Chinese government audits.

Corporations need to continue to conduct due diligence on their customers and business partners to determine the ultimate beneficial owner to verify they are not owned or controlled by an entity on a U.S. sanctions list.

Should we continue to investigate allegations of fraud or corruption?

As compliance or legal officers, you may encounter resistance from upper management who believe regulatory agencies may be in an enforcement dormant period and, therefore, investigating allegations of corruption or fraud should no longer be a top priority. However, it is important to remember that at the start of an investigation, it is often unclear whether allegations of fraud or corruption are, for example, connected to bribes paid to FGOs — which could be an FCPA violation.

Regardless of the investigation's outcome — whether the misconduct involves employee asset misappropriation for personal gain or ultimately reveals payments to FGOs in violation of the FCPA — conducting a thorough investigation enables the organization to confirm or refute the allegations, identify weaknesses in internal controls, and quantify any financial losses. If the investigation uncovers evidence that bribes were paid to FGOs, the organization should consult with internal or external legal counsel to determine whether disclosure to the appropriate regulatory agencies is necessary.

Let's walk through an example. Figure 1 is a section of the Association of Certified Fraud Examiners Occupational Fraud diagram showing several fraud scenarios/schemes that could be used to funnel bribe payments as part of asset misappropriation. A type of billing scheme involves an employee setting up a shell company as a vendor and then creating a mechanism to have the organization pay the shell company through inflated invoices for products, bloated services rendered, or nonexistent services.

At the point when the payment has been made to the shell company, it would be considered asset misappropriation. If, however, a payment is then made from the shell company to an FGO in return for a business advantage (such as winning a public bid), then the decision to disclose to regulatory authorities would be relevant. It would not necessarily be apparent until the payments had been traced all the way to the FGO.

Is due diligence still needed?

Performing risk assessments and scoring on vendors and third-party intermediaries (TPIs) and conducting comprehensive due diligence on the higher-risk TPIs should continue. Remember, the new administration has plans to focus on using the FCPA to bring enforcement actions against TCOs and drug cartels. Drug cartels must launder their ill-gotten gains and, oftentimes, they invest in corporations in several industries, such as:

- ◆ Real estate
- ◆ Mining
- ◆ Retail chains
- ◆ Logistics and transportation
- ◆ Agriculture
- ◆ Telecommunications
- ◆ Financial institutions

There have been criminal cases brought against corporations for providing "material support" to FTOs. As an example, in 2022, a French cement maker paid \$778 million in fines and forfeitures for paying ISIS to operate in Syria.⁹

In May 2025, DOJ indicted the chief financial officer (CFO) of a California-based company for bribery and kickbacks to Mexican cartels as well as customs violations. The CFO allegedly lied to U.S. customs agents and defrauded Mexico out of hundreds of millions of dollars related to underpayment of customs duties.¹⁰

Also, corporations need to continue to conduct due diligence on their customers and business partners to determine the ultimate beneficial owner to verify they are not owned or controlled by an entity on a U.S. sanctions list.

Risk scoring tips

To identify TPIs that have corruption risks, corporations

Figure 2: Bribery scheme case summaries

CASE NO.	INDUSTRY	COUNTRIES	KEY WORDS	SCHEME
1	Aerospace	Nepal, South Africa	advances, commissions	Commission payments
2	Software	South Africa, Indonesia	cash, commissions, sales related services, political contributions, sales commissions	Commission payments
3	Insurance	Ecuador	commissions	Commission payments
4	Oil & Gas	Brazil	sales commissions	Commission payments
5	Telecom	Venezuela	commission	Inflated vendor payments
6	Aerospace	Qatar	studies	Vendor payments for services not rendered
7	Energy	Ecuador	consulting services, prepayments, success fees, volume fee	Vendor payments for services not rendered
8	Telecom	Djibouti, China, Vietnam, Indonesia, Kuwait	consulting, round dollar amounts	Vendor payments for services not rendered
9	Construction	Colombia, Brazil	lobbyists, commissions	Vendor payments for services not rendered
10	Recycle	Mexico, Brazil, Argentina	advances, promotional products, publicity, incentive payments	Vendor payments for services not rendered

should consider the following vendor/TPI high-risk characteristics:

- ◆ Geographic location (Is TPI located or conducting business in a country with high corruption risk?)
- ◆ TPI contact points with FGO (Case 8 in Figure 2 shows where the owner of TPI was the spouse of an FGO)
- ◆ Revenue generated, nature of the transaction
- ◆ Services rendered by TPI (Are they providing value? At market rates?)
- ◆ TPI history:
 - Who recommended the TPI?
 - How long has the TPI been in the industry?
- ◆ TPI's reaction to requests to provide company information,

references, and financial information

Bribery trends

To help corporations investigate fraud and corruption allegations, it is helpful to review the most recent DOJ FCPA enforcement actions to potentially identify new bribery schemes or mechanisms and learn how to detect and prevent bribery payments.

I selected 30 DOJ FCPA enforcement actions judgmentally, meaning I only chose corporate entities as opposed to individuals, starting from 2024 and searching historically back to 2017. I did not review the cases until they had been selected, and once reviewed, I did not discard any cases. Of the 30 cases, 27 (90%) involved TPIs as

part of the bribery scheme utilized to funnel payments to FGOs.

I examined the indictments in the first ten cases to identify the types of bribery schemes and methodologies used to hide and divert payments to FGOs. See Figure 2 for a summary of the cases.

- ◆ Four cases involved commission payments.
- ◆ One case involved inflated invoices.
- ◆ Five cases involved vendor payments where the vendor did not provide any products or services.

A light read of the indictments would indicate each case had unique circumstances and players. For example, the aerospace company employees

Figure 3: Flow of funds



(Case 6) assisted the Qatari company in preparing the proposal, negotiating the pricing, and finally conducted the studies on behalf of the Qatari company. The Qatari company charged \$3 million for a study they did not conduct (the company conducted it!), and the proceeds were funneled to FGOs with the Qatari Air Force, who awarded contracts to the aerospace company. Despite the uniqueness of the scheme, the mechanism is similar to the other 10 cases. See Figure 3 for the flow of funds.

In the 10 bribery cases mentioned, the company or its local subsidiary colluded with a TPI and authorized the TPI to submit invoices for services/

products not provided or provided at well above market rates. The TPI funneled the proceeds to the FGO.

TPI review

There are three steps to review TPIs.

1. TPI risk scoring

Consider the high-risk characteristics outlined in the earlier "Risk scoring tips" section: geographic location, TPI contact points with FGO, revenue generated and nature of the transaction, services rendered by the TPI, the TPI's history, and the TPI's reaction to requests to provide company information.

2. TPI and company transactions review

Once you have identified the high-risk TPIs, the next step would be to review the high-risk TPI contracts and transactions with the company.

Contracts should contain ABC language and certifications that the TPI does not pay or has ever paid bribes. The contract should have a "right to audit clause." There should be specific information regarding pricing and a detailed description of services provided.

The invoices and support for the transactions should be compared to the contracts and market rates for similar services. Invoices should be scrutinized and traced to services/products provided. Red flags for false invoices may include the following:

- ◆ Low and or consecutive invoice numbers (indication of new vendor or vendor with only one customer)
- ◆ Large round dollar amounts
- ◆ PO box or CMRA ("Commercial mail receiving agency," for example, UPS store) addresses with large dollar amounts
- ◆ Inadequate, duplicate, or vague product or service descriptions
- ◆ Inconsistent formatting, logos, frequent misspellings, handwritten invoices, and limited line-item details
- ◆ Addresses that match other vendors or employees

3. TPI and FGO transactions review

Companies should conduct audits on TPIs involved in high-risk transactions. If the company efficiently identifies the high-risk TPIs, the number of TPIs to audit should be manageable. Also, if step 2 identified red flags, the company should prioritize auditing those TPIs first.

Final thoughts

In many of the investigation trainings I provide, convincing owners and upper management that you should investigate all matters — even the seemingly trivial ones — continues to receive the most pushback. I occasionally mention the 1960s Broken Windows experiment, where the researchers parked one vehicle in a high-crime-rate neighborhood and an identical vehicle in a posh neighborhood. In the high-crime-rate neighborhood, passersby immediately vandalized the car. In the posh neighborhood, the vehicle went without a scratch for a week until the researchers smashed a few windows. At that point, even the passersby in the nice neighborhood began to vandalize the car. In corporations, if minor policy violations are not investigated, larger issues may occur. A strong compliance program that consistently investigates all matters may deter fraudsters from violating company policies. 

As stated earlier, the DOJ did lift the enforcement suspension, refocusing enforcement on cases involving U.S. national security, economic interests, and criminal organizations.

Top priority is now given to foreign bribery connected to cartels and transnational criminal organizations (TCOs) — especially cases linked to money laundering,

state-owned entities, or bribes benefiting these groups.

This shift means anti-corruption compliance programs must specifically address and mitigate risks relating to cartels and TCOs; companies operating in high-risk countries or sectors should enhance controls, as involvement with criminal organizations — even indirectly — now poses heightened enforcement risk.

Endnotes

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Takeaways

- ◆ It may be too soon to start reducing the compliance budget, as federal law enforcement agencies have many statutes they can use to enforce corruption, and other countries are enforcing their anti-bribery and corruption (ABC) statutes.
- ◆ Companies should investigate all allegations of corruption, fraud, waste, or abuse as a deterrent to unlawful acts.
- ◆ Bribery schemes continue to use third-party intermediaries, and that should continue to be an area of focus based on risk scoring, due diligence results, and revenue generated.
- ◆ Additional ABC training for employees in high-risk markets is critical, not only to educate but as a reminder that the company monitors transactions on a regular basis.
- ◆ Periodically, do risk assessments of the corporate compliance program to identify risks before they escalate into widespread corruption, fraud, or regulatory violations.