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## *Biden Administration Releases United States Strategy on Countering Corruption*

December 8, 2021

On December 6, 2021, the Biden Administration released the United States Strategy on Countering Corruption (“Strategy”), the first of its kind.<sup>1</sup> This Strategy reaffirms the Biden Administration’s focus on the fight against corruption and represents the culmination of an interagency review that began in June 2021, after President Biden issued a National Security Memorandum establishing the fight against corruption as a “core” national security interest.<sup>2</sup>

The ambitious Strategy calls for increased inter-agency and international coordination and information sharing with additional resources to be devoted to anti-corruption efforts, as well as the development of new guidance, strategy, and tools to improve the Administration’s goal of combatting corruption in the global economy. The Strategy also targets key gatekeepers to the financial system, including lawyers, accountants, and others, by indicating that the Administration will consider working with Congress to secure additional authorities to cover gatekeepers and will consider ways to increase penalties on gatekeepers who facilitate corruption and money laundering. For example, the Administration plans on working with Congress to fix the current “[d]eficiencies in the U.S. regulatory framework” that allow these gatekeepers to move clients’ funds around without understanding the nature or source of income of their clients.<sup>3</sup>

The Strategy outlines the Administration’s intention to “evaluate and implement measures as needed to further safeguard our financial system, and [to] work with likeminded partners and relevant multilateral institutions to do the same.”<sup>4</sup> Specifically, the Administration plans to “make it

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<sup>1</sup> The White House, United States Strategy on Countering Corruption (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

<sup>2</sup> *Biden: The Fight Against Foreign and Transnational Corruption Is a National Security Interest*, WilmerHale (June 8, 2021), <https://www.wilmerhale.com/en/insights/client-alerts/20210608-biden-the-fight-against-foreign-and-transnational-corruption-is-a-national-security-interest>.

<sup>3</sup> United States Strategy on Countering Corruption at 23.

<sup>4</sup> *Id.* at 8.

harder to hide the proceeds of ill-gotten wealth in opaque corporate structures, reduce the ability of individuals involved in corrupt acts to launder funds through anonymous purchases of U.S. real estate,” and “to vigorously enforce the Foreign Corrupt Practices Act (“FCPA”) and other statutory and regulatory regimes via criminal and civil enforcement actions.”<sup>5</sup>

The release of the Strategy comes at a time of increased attention on anti-corruption and anti-money laundering (“AML”) enforcement with top officials at the Department of Justice (“DOJ” or “the Department”) making clear their intention to pursue harsher punishments and more robust international and domestic cooperation among foreign and domestic authorities. In light of this increased policy and enforcement attention, companies and financial institutions should take a fresh look at their existing compliance programs and consider improvements such as integrating their AML, sanctions, and anti-corruption functions to leverage information and proactively identify and manage risk.

Additional strategies and guidance on anti-corruption are expected to be released during the remainder of the Biden Administration. Currently, the Administration is reevaluating the criteria for government-to-government assistance on corruption and may issue additional strategies following further research on the topic.<sup>6</sup> In addition, the DOJ’s Corporate Crime Advisory Group, which we previously highlighted [here](#), is currently reevaluating existing corporate enforcement policies, and is likely to announce additional guidance and policy changes associated with corporate enforcement generally.<sup>7</sup>

## *I. Overview of the Strategy*

On June 3, 2021, President Biden issued a National Security Memorandum, which directed federal departments and agencies to conduct an interagency review of current anti-corruption policies in the United States and identify gaps in the “fight against corruption.”<sup>8</sup> As a result of the review, the Biden Administration announced on December 6, 2021, that it will focus on five pillars of work in combatting corruption:

- Modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption;
- Curbing illicit finance;
- Holding corrupt actors accountable;
- Preserving and strengthening the multilateral anti-corruption architecture; and

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 13-15.

<sup>7</sup> *A Look Ahead into Corporate Enforcement in the Biden Administration*, WilmerHale (Nov. 9, 2021), <https://www.wilmerhale.com/en/insights/client-alerts/2021/1/09-a-look-ahead-into-corporate-enforcement-in-the-biden-administration>.

<sup>8</sup> United States Strategy on Countering Corruption at 4.

- Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.<sup>9</sup>

These pillars, which envision coordination among the DOJ and the Departments of State, Commerce, and Treasury, underline the Administration's focus on increasing enforcement actions relating to corruption and, when combined with the DOJ's intention to "surge resources for corporate enforcement,"<sup>10</sup> foreshadow an increase in corporate investigations.

## *II. Implementation of Strategy on Countering Corruption*

The Administration plans to develop metrics to measure progress against each pillar of the Strategy, which will be summarized in an annual report to the President.<sup>11</sup> The Strategy describes efforts to enhance current research, analysis, and enforcement efforts, improve information sharing and relationships with foreign and domestic authorities, address current deficiencies in the U.S. anti-money laundering regime, update the current tools available to investigate and hold corrupt actors accountable, and leverage innovation in the fight against corruption, among other things.<sup>12</sup>

### *A. Pillar One: Modernizing, Coordinating, and Resourcing U.S. Government Efforts to Fight Corruption*

The Administration plans to (1) enhance corruption related research, data collection, and analysis; (2) improve information sharing both within the U.S. Government and with non-U.S.-Government entities; (3) increase focus on the transnational dimensions of corruption; (4) organize and resource the fight against corruption, both domestically and internationally; and (5) integrate an anti-corruption focus into regional, thematic, and sectoral priorities.

To implement these goals, the Administration will increase resources for anti-corruption issues, including by allocating a larger budget to the enforcement teams. The Strategy also calls for a new anti-corruption task force at the Department of Commerce to focus on diplomatic outreach and foreign assistance for corruption-related investigations. With this task force, the Administration aims to pioneer "innovative solutions" to combat corruption "in the globalized economy."<sup>13</sup>

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<sup>9</sup> *Id.* at 9-15.

<sup>10</sup> Dylan Tokar, *Justice Department to Redouble Efforts in Combating White-Collar Crime, Official Says*, Wall St. J. (Oct. 6, 2021), <https://www.wsj.com/articles/justice-department-to-redouble-efforts-in-combating-white-collar-crime-official-says-11633557791>.

<sup>11</sup> United States Strategy on Countering Corruption at 9.

<sup>12</sup> *Id.* at 9-15.

<sup>13</sup> *Id.* at 9.

## *B. Pillar Two: Curbing Illicit Finance*

To combat illicit finance, the Administration will seek to address deficiencies in the AML regime and to work with partners and allies to address the deficiencies identified. The Strategy identifies several high-risk areas that may lack proper guidance to combat corruption, including cases involving procurement; real estate transactions; investment advisers and private equity funds; key gatekeepers, such as lawyers, accounts, trust and company service providers; tax and offshore financial centers; digital assets; and arts and antiquities markets. The Strategy also noted that more beneficial ownership transparency is needed to curb corrupt actors' illicit activities. Thus, the Administration will invest in building a beneficial ownership database to systematically obtain and share information about beneficial owners of legal entities among federal, state, local, and tribal law enforcement.

The Administration has indicated that it will consider working to secure additional authorities to cover gatekeepers, such as lawyers, accountants, and real estate agents, and will consider ways to increase penalties on gatekeepers who enable and facilitate corruption and money laundering.<sup>14</sup>

## *C. Pillar Three: Holding Corrupt Actors Accountable*

The Administration intends to work with Congress to develop new tools to assist in anti-corruption enforcement and with "the private sector to improve the international business climate by encouraging the adoption and enforcement of anti-corruption compliance programs."<sup>15</sup>

In addition to focusing on individuals and entities who participate in paying bribes, the Strategy also targets foreign public officials who request or receive bribes.<sup>16</sup>

## *D. Pillar Four: Preserving and Strengthening the Multilateral Anti-Corruption Architecture*

The Administration will participate in several international conferences and alliances to encourage the cross-border implementation of existing anti-corruption frameworks. To strengthen global partnerships, the Strategy discusses plans to, among other things, cooperate in NATO's Building Integrity Program, continue to support the development of anti-corruption policies and processes in the Organization for Economic Cooperation and Development (OECD) Working Group on Bribery, and strengthen the implementation of the United Nations Convention Against Corruption (UNCAC).

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<sup>14</sup> *Id.* at 23.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.*

### *E. Pillar Five: Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Goals*

The Administration will also continue to develop cross-border coordination by (1) elevating and expanding the scale of diplomatic engagement and foreign assistance that address corruption; (2) protecting anti-corruption actors, such as journalists, activists, and whistleblowers; (3) leveraging innovation in the fight against corruption by mobilizing non-traditional partners and technologies; (4) improving coordination and risk analysis across foreign assistance; and (5) improving security assistance and integrating corruption considerations into military planning, analysis, and operations.

### *III. Climate of Increased Enforcement*

The release of the Strategy comes at a time of increased attention on corporate enforcement and calls for more severe sanctions, including in corruption matters. Over the last year, the Biden Administration has signaled a stronger focus on corruption-related investigations than the prior administration. In fact, President Biden is the first president to classify the fight against corruption as a “core” national security interest.<sup>17</sup> And public statements from several DOJ officials in recent months have repeatedly emphasized that the DOJ is increasing enforcement resources and taking a tough stance on corruption and corporate crime more broadly.

Deputy Attorney General Lisa O. Monaco explained in a speech on October 28, 2021 that “[c]orporate crime has an increasing national security dimension” because “criminals are taking advantage of emerging technological and financial industries to develop new schemes that exploit the investing public.”<sup>18</sup> Deputy Attorney General Monaco reiterated the DOJ’s commitment to enforcing the anti-corruption laws and announced three changes to the DOJ’s policies on corporate criminal enforcement. First, she directed the DOJ to restore prior guidance “making clear that to be eligible for any cooperation credit, companies must provide the department with all non-privileged information about individuals involved in or responsible for the misconduct at issue.”<sup>19</sup> Second, the DOJ will consider all of a company’s prior conduct when evaluating resolutions with the company. And third, Deputy Attorney General Monaco made clear that “the department is free to require the imposition of independent monitors whenever it is appropriate to do so.”<sup>20</sup> To implement these

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<sup>17</sup> Zachary Basu, *Biden Unveils Corruption Strategy*, Axios (Dec. 6, 2021), <https://www.axios.com/biden-corruption-strategy-441922d9-c9a3-425a-bb49-c6c70f59d893.html>.

<sup>18</sup> Press Release, Dep’t of Justice, *Deputy Attorney General Lisa O. Monaco Gives Keynote Address at ABA’s 36th National Institute on White Collar Crime* (Oct. 28, 2021), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

changes, Deputy Attorney General Monaco stated that the DOJ is hiring a new squad of FBI agents specifically for the DOJ's Criminal Fraud Section.

A couple weeks after Deputy Attorney General Monaco's speech, John Carlin, the Principal Associate Deputy Attorney General, gave an interview to the Financial Times in which he also warned of increased enforcement of the anti-corruption.<sup>21</sup> Carlin noted, "you'll see cases in the weeks to come" involving "some of the largest corporations" operating in the United States.<sup>22</sup> Specifically, Carlin warned that the DOJ will be looking at companies that violate their deferred prosecution agreements and that the DOJ will be taking "significant" action against companies that fail to invest in compliance systems that they were required to put in place.<sup>23</sup> Carlin concluded that there will be "an unprecedented focus by [Attorney General Merrick Garland] on corporate accountability."<sup>24</sup>

And, just last week, on December 1, 2021, Kenneth Polite, the Head of the DOJ's Criminal Division, reiterated the DOJ's plans for increased enforcement relating to corporate corruption.<sup>25</sup> Polite stated that the DOJ will "surge resources" for corporate enforcement, and that these resources will be used "not just to investigate a case once it's in the door but to actually identify the cases at the outset."<sup>26</sup> Polite also reemphasized that the DOJ will be looking at the "full picture of the corporate entity" when determining enforcement actions.<sup>27</sup>

We expect that the Biden Administration will continue to aggressively pursue corporate crime in the months and years to come, and the consequences of corporate missteps in this area will become more severe, both in terms of the Government's investigatory approach and its stance on potential penalties and other remedies. In light of this increased focus, enhanced resources, and broad inter-agency approach, companies should review their anti-corruption and AML compliance programs to ensure effectiveness in preventing violations and investigating and remediating potential violations when they occur.

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<sup>21</sup> Stefania Palma, *DOJ Warns of Impending Corporate Crime Crackdown*, Fin. Times (Nov. 10, 2021), <https://www.ft.com/content/81a90d89-2fa5-45b3-8de6-d70ae9e37810>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Clara Hudson, *Companies are Erring on the Side of Caution, Says Criminal Division Chief*, Global Investigations Rev. (Dec. 1, 2021), <https://globalinvestigationsreview.com/just-anti-corruption/criminal-division-chief-companies-are-erring-the-side-of-caution>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

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