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United States Strategy on Countering Corruption

On December 6, 2021, the White House issued the “United States Strategy on Countering Corruption” (the “[Strategy Document](#)”) and accompanying [fact sheet](#). This release by the Biden Administration follows a months-long interagency review of existing U.S. government mechanisms for fighting corruption on both the domestic and global fronts. The five-point Strategy Document represents the U.S. Government’s first formal multi-departmental approach to combating corruption and acknowledges the ways transnational corrupt actors have exploited loopholes in United States financial reporting requirements to undermine anti-money laundering and counterterrorism efforts.

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Background

On June 3, 2021, President Biden issued the “National Security Study Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest” (the “[NSS Memorandum](#)”). The NSS Memorandum established anti-corruption as one of the Biden Administration’s top national security priorities, describing corruption as undermining trust in government, compromising economic equity, and facilitating the actions of authoritarian regimes, among other negative externalities. Pledging that the fight against corruption would secure “a critical advantage for the United States and other democracies,” the NSS Memorandum authorized a 200-day interagency review to assess existing anti-corruption practices and identify gaps in both domestic and international frameworks. The Strategy Document is a product of that review and represents the United States’ first-ever wide-ranging, whole-of-government agenda for fighting corruption.

The Strategy Document

The Strategy Document identifies five “mutually reinforcing pillars of work” to strengthen the United States’ anti-corruption efforts. These pillars are:

1. Modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption;
2. Curbing illicit finance;
3. Holding corrupt actors accountable;
4. Preserving and strengthening the multilateral anti-corruption architecture; and
5. Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals.

These efforts will tackle corruption in multiple forms including interactions between low-level government officials and the private sector; kleptocracy and state capture; strategic corruption in a nation’s foreign policy; and theft of public funds or abuse of power by political elites. A critical component of the United States’ strategy going forward will be the elimination of gaps in existing anti-money laundering and transparency frameworks, including corrupt actors’ use of anonymous shell companies, opaque transactions, and “under-regulated professional service providers.”

Each of the five pillars of work sets out goals for transnational collaboration, domestic interagency cooperation, and efforts to bolster intelligence gathering, law enforcement actions, and accountability measures. Going forward, federal departments and agencies will report annually to the President on progress made on these efforts, implementation of which has already begun.

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

The first pillar represents a broad effort to commit United States funding and human effort to combating corruption. Key goals include the enhancement of data collection and research across government agencies, the improvement of domestic and international data sharing, and an overall increased focus on fighting corrupt actors in all facets of public life. The Department of Commerce will create a new anti-corruption task force to work in collaboration with similar groups at the United States Agency for International Development (USAID), the Department of the Treasury, and the Department of State. The Biden administration also pledges to secure increased funding for law enforcement from Congress and to focus their investigative efforts on combatting “egregious activities” such as drug trafficking and terrorist financing.

Pillar Two: Curbing Illicit Finance

The second pillar describes the United States’ obligation to close regulatory gaps in regimes for combating money laundering and the financing of terrorism. This effort will involve both the internal resolution of blind spots in U.S. anti-money laundering processes and outreach to allies and other nations to address their own governance deficiencies. Regulatory and enforcement action items include:

- Creation of a database to track beneficial ownership information for anonymous shell companies and renewed focus on transparency in government procurements under the National Defense Authorization Act (NDAA);
- Revision of proposed rulemaking on the promulgation of minimum reporting standards for investment advisors and equity funds, which could require select financial professionals to disclose the existence of anti-money laundering and suspicious activity reporting programs;
- Cross-industry and cross-agency efforts to hold third-party actors—including accountants, lawyers, and service providers—responsible for corrupt use of the financial system;
- Commitment to bring “aggressive enforcement actions,” including expansion of criminal substantive law where appropriate and the leveraging of whistleblower programs and beneficial owner disclosure obligations, to hold money launderers and their enablers responsible for corrupt behavior; and
- Requirement that parties to real estate transactions reveal the existence of any ill-gotten gains and money laundering, including new efforts to tackle issues surrounding offshore financial centers, digital assets, and the art and antiquities markets.

The promise of “aggressive enforcement actions” aligns with prior comments this year from DOJ officials that the U.S. Government will continue to enact “groundbreaking policies” to identify FCPA violations proactively, as well as predictions that DOJ would be stepping up enforcement efforts under the Biden administration.¹ The inclusion of guidance related to digital assets is also notable, linking “the ways in which corruption contributes to [digital asset] risks.” In particular, the Strategy Document states that digital assets have been used “in support of a variety of illicit activities, including proliferation financing, ransomware attacks, human and narcotics trafficking, fraud, corruption, and sanctions evasion.” The U.S., like many other countries, has struggled to determine the appropriate regulatory regime to

¹ Nicholas McQuaid, Acting Assistant Attorney General, Dep’t of Justice, Keynote Address at the Foreign Corrupt Practices Act New York (June 2, 2021); *see also* Clara Hudson, *FCPA Enforcement is “In An Entirely New” Place, Says Acting Criminal Division Chief*, Global Investigations Rev. (June 2, 2021), <https://globalinvestigationsreview.com/just-anti-corruption/fcpa/fcpa-enforcement-in-entirely-new-place-says-acting-criminal-division-chief>; Jennifer Freel, Matthew Jacobs, and Elizabeth Matthews, *Polite Prediction: Criminal Division Appointee Positions DOJ for Focus on Public Corruption, Civil Rights, National Security, and Fraud With a Heightened Scrutiny on Compliance Programs*, JDSupra (Apr. 23, 2021), <https://www.jdsupra.com/legalnews/polite-prediction-criminal-division-6992781/>.

apply to digital assets. The Strategy Document does not make any concrete announcements, but states that the U.S. will develop regulations “as needed” and engage with other countries to develop central bank currencies with a view to countering illicit finance.

Pillar Three: Holding Corrupt Actors Accountable

The third pillar promises a renewed effort to hold corrupt actors accountable for their actions through a variety of new and strengthened enforcement mechanisms. Specific focal points include:

- Continued focus on enforcement through the Foreign Corrupt Practices Act (FCPA), money laundering charges, and forfeitures, as well as increased deployment of sanctions designations, suspension from government contracts, visa restrictions, and debarment;
- Creation of a new government task force—the National Cryptocurrency Enforcement Team—to study and focus on criminal misuse of cryptocurrencies, including money laundering infrastructure actors, mixing and tumbling services, and virtual currency exchanges;
- Establishment of a Kleptocracy Asset Recovery Rewards Program (through the Treasury Department) and Democracies Against Safe Havens Initiative (through the State Department) to identify and recover stolen assets connected to U.S. financial institutions and coordinate with foreign governments to prevent corrupt actors from eluding law enforcement;
- Outreach to private sector corporations to foster the adoption and maintenance of corporate anti-corruption compliance programs in U.S. and international companies; and
- Collaboration with foreign governments to address concerns created by Citizenship by Investment (CBI) programs, which grant foreign investors citizenship rights in the country at issue without any prior residency requirements (e.g., bad actors using CBI benefits to obtain access to the international financial system and visa-free mobility).

Pillar Four: Preserving and Strengthening the Multilateral Anti-Corruption Architecture

The fourth pillar focuses on bolstering existing international frameworks—initiatives, agreements, and standards—to combat corruption on the global scale. The U.S. Government will redouble its efforts to hold foreign partners responsible for criminalizing and prosecuting foreign bribery, subject to existing obligations under agreements such as the UN Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention, as well as through multilateral forums such as the G7 and G20. Additional efforts will include increased commitment to global partnerships such as the Open Government Partnership and the Extractive Industries Transparency Initiative.

Pillar Five: Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Objectives

The fifth pillar seeks to maximize the effectiveness of the U.S. Government’s aid and assistance to other nations in combating corruption. Key components include renewed diplomatic efforts with foreign nations to understand local corruption concerns, the expansion of financial assistance to other nations in anti-bribery efforts, and increased support and protection for foreign change agents such as journalists, reformers, and anti-corruption advocates. Additional measures include the development of response funds to implement anti-corruption programming abroad, re-evaluation of criteria for government-to-government assistance to include anti-corruption efforts, improved analysis of corruption risks

in military operations and national security, and promotion of emerging technologies to develop innovative ways to identify and combat corrupt conduct across the public and private sectors.

Recommendations:

The Strategy Document represents an invigorated effort by the U.S. Government to address corruption and bribery both domestically and internationally in the public and private spheres. As the U.S. Government implements the Strategy Document, U.S. multinational corporations, as well as non-U.S. multinational corporations with U.S. ties, should consider taking the following proactive steps:

- Review internal compliance programs, including compliance resourcing, staffing, and training, to ensure effective identification and remediation of money laundering, bribery, or other corrupt behavior;
- Ensure that internal whistleblower protection programs are designed to escalate promptly potential issues and that employees are not discouraged from speaking out;
- Proactively promulgate anti-money laundering and reporting requirements to ensure that clients and partner organizations comply with relevant anti-money laundering laws;
- Maintain robust due diligence procedures for all third-party service providers and partners, both domestically and abroad, to avoid agency liability for third-party bad actors; and
- Monitor local anti-corruption and enforcement landscapes when conducting business with foreign nations and government officials to ensure compliance with relevant anti-bribery laws.

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