

RESOLVING TO FIGHT CORRUPTION: BIDEN ADMINISTRATION RELEASES "UNITED STATES STRATEGY ON COUNTERING CORRUPTION"

On December 6, 2021, the White House released the first ever "United States Strategy on Countering Corruption" (the "Strategy") that lays out the Administration's goals to address global corruption. The Strategy follows the National Security Study Memorandum (June 3, 2021), which focused on fighting corruption as a core US national security interest. Recognizing the far-reaching effects of corruption on governments, businesses, and citizens and linking a "critical advantage," for the United States in preventing corruption, the Strategy sets forth a roadmap for companies. The Strategy, as summarized by the White House [here](#), signals where we can expect to see further regulation, compliance scrutiny, and likely enforcement. Below are some of the concrete initiatives which we expect to remain in focus in 2022, and which may increase the regulatory burden on companies.

Enhance due diligence practices regarding beneficial ownership information

The Administration intends to fully implement the Corporate Transparency Act ("CTA") in 2023 by creating a new beneficial ownership registry. The CTA requires "reporting companies" to file information on their beneficial owners. The CTA defines reporting companies as corporations, limited liability companies, or similar entities – including foreign companies – created or registered by the filing of a document with a secretary of state. Failure to comply with reporting requirements may result in civil and criminal penalties. The registry will be accessible to various authorities, including Federal agencies focused on national security and intelligence matters, law enforcement agencies at every level, and even certain financial institutions and foreign authorities. In addition, pursuant to Section 885 of the FY21 National Defense Authorization Act ("NDAA"), the US will issue

beneficial ownership transparency regulations requiring all companies receiving Federal defense contracts in excess of \$500,000 to publicly disclose the true owners of the contracts. This information will be added to the Federal Awardee Performance and Integrity Information System database. These regulations are intended to help identify bad actors hiding behind opaque corporate structures and increase transparency in Federal defense contracting. The proposed rule will be included in the Federal Awardee Performance and Integrity Information System (FAR 9.104-6) and it is currently in the drafting process. The report is due for review by the Office of Information and Regulatory Affairs by December 22, 2021.

Develop proper mechanisms to deter and investigate misuses of cryptocurrency and comply with legal requirements if you are dealing with complex cryptocurrency transactions

Companies dealing with cryptocurrency transactions should expect significant scrutiny from DOJ's new National Cryptocurrency Enforcement Team ("NCET"). The task force, which will be part of the DOJ's Criminal Division, was created to deter, investigate, and prosecute criminal misuses of cryptocurrency and recover illicit proceeds from those transactions. In a press release, DOJ publicly acknowledged the wide array of misuses of cryptocurrency, including its function as the primary mechanism for ransomware payments, money laundering, and operation of illegal money services businesses. NCET aims to address these complex transactions by strengthening its investigative and technological capabilities while promoting more robust enforcement action.

Consider enhancements to corruption detection in your own systems and controls given focus on development of anti-corruption investigative methods, including new technologies to prevent and combat transnational corruption

As part of its commitment to fighting corruption, the Administration plans to develop and utilize a wide variety of new investigative methods, tools, technologies, and partnerships to prevent and combat transnational corruption. These innovations will make it more difficult for illicit actors to conceal corrupt behavior and could lead to an increase in the number of investigations and enforcement actions. One such initiative, the Anti-Corruption Solutions through Emerging Technology program, will bring together actors from the private and public sectors to collaborate in developing new anti-corruption technologies. The Administration will also partner with researchers, technologists, philanthropists, media persons, and private sector actors from "key industries" to expand the US's arsenal of anti-corruption programs and tools.

The US plans to implement two new response funds dedicated to the development and modernization of its anti-corruption weaponry: (1) the USAID Anti-Corruption Response Fund, which will support, test, and develop innovative anti-corruption programming; and (2) the Global Anti-Corruption Rapid Response

Fund, which will enable expert advisors to consult, assist, and engage with international anti-corruption authorities.

Prepare for mandatory reporting requirements if you are a real estate actor, investment advisor, and other private equity fund, or key gatekeeper and facilitator

To increase transparency in real estate transactions, the Treasury will impose reporting obligations on "those with valuable information regarding real estate transactions." These requirements are aimed at thwarting efforts to launder illicit and corrupt proceeds through anonymous purchases of real estate in the United States. Further, the Treasury intends to revisit plans to prescribe minimum standards for anti-money laundering programs and suspicious activity reporting requirements for certain investment advisors, again to prevent illicit actors from accessing the US investment market to launder funds.

Prepare for an elevated US presence abroad due to the Administration's commitment to assist foreign governments in increasing financial transparency, reducing foreign bribery, and eliminating safe havens

The Administration is committed to helping fight corruption abroad through multiple coordinated efforts with foreign governments:

- *Building up Foreign Anti-Corruption Regimes:* The US intends to help foreign partner governments enact and implement foreign bribery laws and adopt and strengthen anti-corruption regulatory frameworks. This includes establishing foreign assistance programs to increase the capacity and sophistication of foreign oversight authorities. Where appropriate, the US will even partner with foreign countries to co-investigate and prosecute corrupt and illicit actors.
- *Eliminating Safe Havens:* The Administration plans to launch the Democracies Against Safe Havens Initiative, through which the DOS will work with foreign partners to prevent the establishment of safe havens for corrupt actors and proceeds.
- *Expanded Subpoena Power:* As discussed here, the DOJ and the Treasury now have enhanced authority to subpoena from foreign banks certain financial records stored outside the United States relating to a money laundering or criminal investigation.
- *Private Sector Compliance Programs:* US authorities will encourage international companies to adopt and enforce anti-corruption compliance programs and policies as well as relevant anti-corruption provisions in trade agreements.
- *FBI International Corruption Unit:* DOJ and the FBI's International Corruption Unit have established squads in foreign offices to investigate FCPA and kleptocracy cases abroad.

Non-US companies and actors should expect that US authorities will use their broad powers to bring enforcement actions in US courts involving foreign conduct.

Enhance detection of proceeds of foreign government corruption before a whistleblower does

Pursuant to the FY21 NDAA, the Treasury established the Kleptocracy Asset Reward Program ("KARP"), which is a pilot program aimed at rewarding whistleblowers for providing information leading to the restraint, seizure, forfeiture, or repatriation of assets derived from foreign government corruption held in US financial institutions. Whistleblowers, who may be U.S. persons or non-U.S. persons, may receive up to \$5 million for sharing information under this program. As discussed [here](#), the availability of sizable rewards for whistleblowers under similar existing schemes has created an environment ripe for whistleblowing. The KARP will likely be no exception, considering the US's appetite to punish corrupt foreign governments and actors.

The Strategy reflects the Administration's relentless appetite to fight corruption and punish those who fail to detect, prevent, and condemn corruption as a threat to national security. The Administration's five pillars to build its evolving anti-corruption efforts – modernizing, coordinating, and resourcing US Government efforts to fight corruption; curbing illicit finance; holding corrupt actors accountable; preserving and strengthening the multilateral anti-corruption architecture; and improving diplomatic engagement – should serve as an important reminder of the value of implementing strong anti-corruption and anti-bribery compliance programs. The Administration's commitment to fighting transnational corruption will continue to fuel regulatory changes like the ones described above and likely enforcement for those who fall short.

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