

President Biden Declares the Fight against Corruption a National Security Priority and Directs Federal Agencies to Enhance Enforcement

June 7, 2021

On June 3, 2021, President Joseph Biden issued a National Security Study Memorandum declaring that combatting corruption is a core national security priority. The Memorandum requires federal agencies including the Department of Justice (“DOJ”), Treasury Department, State Department, intelligence agencies and others to engage in an interagency review and prepare a responsive report within the next 200 days. That report will address how the U.S. government can modernize and better resource efforts to fight corruption; challenge the use of illicit finance; hold corrupt parties individuals, organizations and their facilitators accountable; and strengthen international partnerships and assistance.

This Memorandum signals the Biden Administration’s redoubled emphasis on anti-corruption efforts—even though, contrary to the expectations of many, enforcement of the Foreign Corrupt Practices Act (the “FCPA”) remained vigorous under the prior administration. There already had been widespread anticipation that the Biden Administration would shift more enforcement resources to the anti-corruption front and seek to strengthen cross-border coordination in investigating such matters. The Memorandum confirms that such initiatives are in progress and have the focus and attention of the most senior leadership in the administration. Significantly, the Memorandum seeks a presidential strategy that spans the federal government, not only the U.S. agencies specifically tasked with enforcing the FCPA (DOJ and the Securities and Exchange Commission (the “SEC”)).

In particular, the Memorandum identifies five key priorities:

- Dedicate additional resources of federal departments and agencies to fighting corruption, both domestically and overseas, including by identifying where new structures and staffing would be appropriate;
- Increase transparency in the international financial system, including by reducing the use of offshore tax havens, illicit assets and shell companies, and accelerate groundbreaking actions by the Treasury Department to create a beneficial ownership

registry as required by last year's Corporate Transparency Act and close related regulatory loopholes;

- Reemphasize holding accountable individuals and organizations involved in corrupt activities as well as those facilitating or enabling corruption, including by strengthening efforts to bar illicit actors from accessing the international financial system through anti-corruption sanctions under the Global Magnitsky Act, seizing and recovering illicit assets through greater criminal and civil enforcement actions under DOJ's Kleptocracy Asset Recovery Initiative and increasing the capacity of other stakeholders—state and local agencies, the media, non-governmental organizations and international partners—to support anti-corruption efforts;
- Consistent with the Biden Administration's attention to international alliances, strengthen cross-border partnerships in investigating corrupt conduct, including where perpetrated by autocratic or kleptocratic governments; and
- Along similar lines, increase attention to foreign assistance programs and security cooperation procedures in the interest of developing other countries' capacities to implement their own anti-corruption and transparency measures.

As the Memorandum makes clear, the Biden Administration believes that vigorous FCPA enforcement is critical not only as a matter of criminal justice but also national security. As such, we expect the Memorandum to fuel renewed efforts across the federal government to increase interagency collaboration in detecting, investigating and prosecuting foreign and domestic corruption. DOJ already works closely with agencies such as the State Department and Treasury Department on anti-corruption efforts and investigations. That engagement may become more formal and rigorous, and it presumably will include further collaboration with other agencies identified in the Memorandum, including the intelligence agencies. The Memorandum also portends increased cooperation by the federal government with foreign countries and international institutions in combatting corruption.

These imperatives—DOJ working with other federal agencies and coordinating with foreign partners on FCPA matters—are not new but are likely to accelerate given that this is now a top priority for the Biden Administration. Of course, a key driver of government prioritization is funding, so it will be important to see if, as we expect, significant additional resources are allocated to DOJ and the SEC to pursue foreign corruption cases.

The Memorandum also may foretell DOJ's and the Treasury Department's aggressive use of their new subpoena power enacted as part of the National Defense Authorization Act for 2021. That law authorized subpoenas to any foreign bank that maintains a U.S.

correspondent account for records related to “the correspondent account or any account at the foreign bank, including records maintained outside the United States,” that are the subject of, among other things, any federal criminal investigation.¹ The government has not yet made clear how frequently or under what circumstances it will employ this powerful new tool. But in light of the Memorandum, DOJ and Treasury understandably may feel they have greater flexibility to use all available tools, including this new subpoena power, to investigate and ultimately prosecute foreign corruption.

Given the administration’s focus on fighting corruption and related developments, it is more important than ever for companies to have a robust anti-corruption compliance framework in place. Many companies, particularly those with international operations, already had been preparing for an increased emphasis on anti-corruption enforcement by the Biden Administration. Among other steps, companies should consider refreshing risk assessments of their operations, reviewing their compliance programs and considering enhancements to their policies and procedures in anticipation of the potential for heightened scrutiny. This most recent announcement by the administration confirms that such steps are prudent and well advised, and it serves as a reminder to anyone flouting the law that anti-corruption enforcement by the United States and its partners will become even more vigorous in the coming years.

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Please do not hesitate to contact us with any questions.

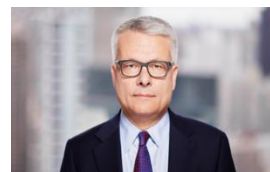
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¹ See “Congress Passes Sweeping Anti-Money Laundering and Corporate Beneficial Ownership Law,” *Debevoise In Depth* (Jan. 4, 2021), <https://www.debevoise.com/insights/publications/2021/01/congress-passes-sweeping-anti-money-laundering-and>.

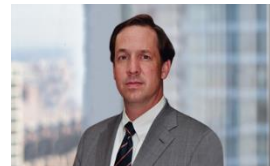
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