On December 6, 2021, the Biden administration released a first-of-its-kind, comprehensive US Strategy on Countering Corruption. The Strategy addresses all angles of the fight against corruption: prevention, investigation, exposure, and prosecution. To accomplish this, it relies on a whole-of-government approach resting on five “pillars”:

1. **Modernizing, coordinating, and resourcing US government efforts to better fight corruption**

This pillar promises to provide additional resources to federal departments and agencies for their anti-corruption efforts, specifically intelligence collection and data analysis. Key players in this effort will be the Departments of State, Treasury,
and Commerce and the US Agency for International Development (USAID). This recognizes the US’s need to bolster its domestic resources and capabilities if it wants to maintain its credibility as a leader in the global fight against corruption.

2. Curbing illicit finance

The Biden administration believes that, as the world’s largest economy, the US has a responsibility to address gaps in its own regulatory system, in addition to working with its foreign partners to do the same. Closing these gaps will prevent corrupt actors from exploiting regulatory vulnerabilities to obscure ownership of assets and launder illicit proceeds, with the hopes of increasing transparency in both the domestic and international financial systems. To accomplish this, the Biden administration seeks to heighten scrutiny of real estate transactions—a common vehicle for money laundering—and the “gatekeepers” to financial systems: notably lawyers, accountants, and trust and company service providers. The Strategy also points to the need to finalize regulations governing disclosure of beneficial ownership information for corporate entities, and to then build out a database of beneficial ownership information for certain companies to cut off the ability of bad actors to hide behind anonymous shell companies.

3. Holding corrupt actors accountable

To increase accountability for those who engage in corruption, the Strategy promises to support and protect actors working to expose corruption, both at home and abroad. On the prosecutorial side of accountability, the Strategy promotes “strong enforcement efforts” and “applying existing laws with vigor,” particularly the US’s existing anti-corruption legislation, the Foreign Corrupt Practices Act (FCPA). Moving beyond existing laws, the Strategy further promises to work with Congress to criminalize the demand-side of bribery by foreign public officials, a loophole that has long existed in the FCPA. As a counter to foreign bribery, the Strategy also announced a Department of the Treasury pilot program offering payments to individuals for information leading to the recovery of assets linked to foreign government corruption held in US financial institutions.

4. Preserving and strengthening the multilateral anti-corruption architecture

The Biden administration aims to revitalize the US’s leadership role within existing international institutions to bolster the anti-corruption capabilities of multinational systems, organizations and initiatives, such as the United Nations, NATO, the Organization for Economic Cooperation and Development, and the Open Government Partnership and Extractive Industries Transparency Initiative.

5. Improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals

Similar to the fourth pillar, the last of the Strategy’s mutually reinforcing pillars rests on diplomatic engagement with foreign partners. Specifically, the Strategy seeks to prioritize anti-corruption work within the US’s diplomatic efforts and to
include transparency, accountability and anti-corruption markers among the criteria for government-to-government assistance.

Key Takeaways

Resting on the combined support of all five pillars, the Strategy represents an ambitious expansion of the US’s anti-corruption efforts—an expansion that the Biden administration promises has already begun, as federal departments and agencies are already implementing certain of the Strategy’s objectives. While the Strategy relies heavily on diplomatic efforts to deter and prevent corruption, the increased emphasis on information sharing—both domestically, between the intelligence community and federal agencies, and internationally with our foreign partners—may lead to an increase in new corruption cases in the near term, especially as federal departments and agencies are expected to report annually to the President on progress made towards implementing and executing the Strategy.\(^2\) The potential expansion of the FCPA could also lead to an increase in domestic enforcement activity, as agents of foreign governments and employees of state-owned entities operating in the US find themselves subject to increased scrutiny.

The private sector can also expect to see stricter requirements involving the disclosure and tracking of beneficial ownership; increased scrutiny and diligence for government contracts; additional reporting requirements for real estate transactions; and additional regulatory insight over investment advisors and private equity funds. So-called “gatekeepers” such as attorneys, accountants, and registered agents or nominees can expect to face additional scrutiny and expectations that these gatekeepers must conduct more thorough due diligence on those that they service. The cryptocurrency / digital currency sector should also expect heightened oversight and diligence requirements as regulations and regulators catch up with advances in digital technology. And, companies should keep a close eye on enforcement trends for FCPA investigations and how those investigation outcomes may in turn necessitate changes to corporate compliance programs to keep in step with regulator expectations.

\(^1\) Strategy at 12.

\(^2\) Strategy at 16.

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