

Legal Update

First-Ever US Strategy on Countering Corruption Globally: *Key Takeaways for Corporations to Match Enforcement's Increasingly Global, Integrated and Holistic Approach*

On December 6, 2021, the White House released the first-ever [US Strategy on Countering Corruption](#) (the "Strategy") and an accompanying [Fact Sheet](#) summary. The Strategy's release follows President Biden's earlier [announcement in June 2021](#) that elevated the fight against corruption to a core US national security interest and that directed multiple agencies to design a comprehensive and whole-of-government approach. The Strategy's release also coincides with a number of other recent US and global developments that companies must navigate going forward. In particular, the Strategy's release follows recent updates to US Department of Justice [enforcement policy](#) announced by Deputy Attorney General Lisa Monaco in late October 2021 (which US enforcement agencies and the legal and corporate communities discussed further at the recent ACI International Conference of the Foreign Corrupt Practices Act),¹ as well as the OECD's [newly revised Recommendation](#) for Further Combating Bribery of Foreign Public Officials in International Business Transactions, released on November 26, 2021.

This Mayer Brown Legal Update provides a **Quick Blue Box Update** on the Strategy's **Five Pillars**. As practical impacts can be easily lost in lists of objectives and policy language, this Update also provides **Key Takeaways** for companies to consider as they look to match enforcement's increasingly global, integrated and holistic approach to corruption via anti-corruption enforcement, the public/private partnership, follow-the-money strategies, cross-border cooperation, and government spending and defense programs controls.

US Strategy on Countering Corruption: Five Pillars of Implementation. As summarized in the accompanying [Fact Sheet](#), the new US Strategy on Countering Corruption organizes implementation efforts into five mutually reinforcing pillars, each with a number of related strategic objectives. Metrics will be developed to measure progress against each strategic objective, which will inform annual status reporting to the president.

1. **Modernizing, Coordinating and Resourcing US Government Efforts to Fight Corruption.** In recognition of the need for an updated whole-of-government approach to organizing and resourcing the fight against corruption, both within the United States and abroad, committing to:
 - Improving information sharing within the US government, with non-US-governmental entities and internationally;

- Increasing focus on the transnational dimensions of corruption, including by prioritizing intelligence and analysis on corrupt actors and their networks;
 - Enhancing corruption-related research, data collection and analysis; and
 - Integrating an anti-corruption focus into regional, thematic and sectoral priorities.
2. **Curbing Illicit Finance.** Working with partners and allies to address deficiencies that may allow corrupt actors and their facilitators to rely on vulnerabilities in the US and international financial systems, including via:
- Issuing beneficial ownership transparency regulations to counteract opaque corporate structures;
 - Targeting gatekeepers to the financial system—including lawyers, accountants, and trust and company service providers; and
 - Working with partner countries to strengthen their anti-money laundering regimes to bring greater transparency to the international financial system.
3. **Holding Corrupt Actors Accountable.** Enhancing and updating enforcement efforts and available tools, including by:
- Working with the private sector to encourage the adoption and enforcement of anti-corruption compliance programs by US and international companies;
 - Elevating diplomatic and development efforts to support, defend and protect civil society and media actors who expose corruption; and
 - Establishing a kleptocracy asset recovery rewards program targeting stolen assets linked to foreign government corruption that are held at US financial institutions.
4. **Preserving and Strengthening the Multilateral Anti-Corruption Architecture.** Prioritizing ongoing US support for multilateral initiatives, commitments and standards that move countries to make real improvements in countering corruption, including via:
- Strengthening support for organizations such as the OECD, OAS and UN;
 - Reinvigorating US participation in the G7 and G20 and across a broader range of related international transparency and anti-corruption initiatives; and
 - Building and expanding accountable, effective and resilient security institutions.
5. **Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Achieve Anti-Corruption Policy Goals.** Elevating anti-corruption work as a priority within US diplomatic engagement and foreign assistance efforts, including by:
- Expanding anti-corruption-focused US foreign assistance and monitoring its efficacy;
 - Improving security assistance and integrating corruption considerations into military planning, analysis and operations; and
 - Bolstering public sector anti-corruption capacity and support via protection of anti-corruption actors such as independent audit and oversight institutions.

With the White House and DOJ announcing concrete moves towards holistic enforcement, companies will need to prioritize and expedite their own evolution to holistic risk compliance in order to keep pace. The release of the new Strategy, particularly when viewed alongside other recent US enforcement policy and global guidance, provides an opportunity to consider the bigger picture and what actionable messages companies can draw from these developments. Based on these recent updates, below we consider five **Key Takeaway and Impact** areas for companies:

- **Anti-Corruption Enforcement:** Increased Resourcing, Tools and Demand-side Accountability.
- **The Public/Private Partnership:** The Role of Corporations and Civil Society as the Government Embraces Compliance Program Terminology and Techniques.
- **A Follow-the-Money Strategy:** Focusing on Anti-Money Laundering, Transparency, Gatekeepers and International Coordination.
- **Tailored Diplomatic Approaches for Friends and Foes:** Increased Diplomacy With the Like-Minded, or Sanctions and Protection of the Whistleblowers for the Recalcitrant.
- **Integration Across Biden Administration Programs:** Strategic Government Program Spending Increasing Corruption Touchpoints.

Anti-Corruption Enforcement: Increased Resourcing, Tools and Demand-Side Accountability

The Strategy recognizes the United States' historical leadership position in foreign corruption enforcement, and the success of increasing transnational cooperation. If not already evident, the Biden administration (the "Administration") goes on record to state "we will continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA) and other statutory and regulatory regimes via criminal and civil enforcement actions." The Strategy clearly prioritizes building on FCPA enforcement success with:

- **Resourcing: People, Process and Systems** – The Strategy's very first pillar is "modernizing, coordinating and resourcing U.S. Government efforts to fight corruption" and it commits to "[e]ngaging with Congress to encourage resourcing of the anti-corruption agenda through assistance and operational budgets."
 - We can expect increased funding of the dedicated FCPA DOJ, SEC, and FBI units, which was also confirmed by Kenneth Polite, assistant attorney general for DOJ's Criminal Division, at the December 2021 annual ACI International Conference of the Foreign Corrupt Practices Act ("ACI's 2021 FCPA Conference") when he noted that the department will "surge resources" for corporate enforcement activities—including via a new squad of FBI agents and additional headcount to the DOJ's Fraud Section's recently re-named "Corporate Enforcement, Compliance and Policy Unit," which is responsible for evaluating compliance programs.
 - Along with that increased resourcing in other agencies, a Commerce Department "Task Force" will dedicate intelligence resources to mine data and identify corruption trends. The terms "metrics," "tools," "intelligence" and "data" are repeated throughout the Strategy's text, forecasting the increasing role these tools will continue to play in FCPA detection and investigation and also in compliance program evaluation.
 - Focusing outside the United States, references to "framework" and "architecture" for transnational cooperation indicate that the Administration is looking to expand upon the existing formal (through the OECD's Convention on Combating Bribery and otherwise) and informal relationships that DOJ and the SEC have fostered that have assisted foreign counterparts in creating "complementary

regimes and amplify[ing] [US] efforts.” The recent success of FCPA cross-agency and transnational cooperation is building and moving to a vision of shared resources, tools and technology.

- **Demand-Side Accountability** – Much as with Deputy Attorney General Monaco’s announcement, the word “accountability” is present throughout the Strategy, implying continued FCPA focus on individual enforcement but also relaying a commitment to “working with Congress to criminalize the demand side of bribery by foreign public officials.” Targeting demand-side bribery also aligns with a key priority from OECD’s recently updated *Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions*. While all global companies will be watching this promise of proposed legislation, State Owned or Controlled Entities (SOEs) and foreign government instrumentalities will be particularly focused on how these may impact their enforcement risks and compliance program controls.

The Strategy also covers domestic corruption, again focusing on increased resourcing and emphasizing the cross-agency cooperation strategies that have been so effective in FCPA enforcement. Companies should anticipate additional resourcing in the form of dedicated roles and increased leveraging of information sharing and capabilities across agencies domestically under a whole-of-government approach. In a similar vein, DOJ’s newly minted Corporate Crime Advisory Group will also look to consult very broadly as it addresses multiple relevant subject matters coming out of the updates to Corporate Criminal Enforcement Policies Deputy Attorney General Monaco announced. In addition, to fight domestic corruption, the Strategy also highlights the need for “independence” to “investigate and prosecute.” The call for domestic corruption legislation includes advocacy “for greater transparency in the U.S. campaign finance system, and to strengthen prohibition on foreign national attempting to influence federal, state or local elections.”

The Public/Private Partnership: *The Role of Corporations and Civil Society as the Government Embraces Compliance Program Terminology and Techniques*

The Strategy calls out civil society and the private sector as 1) sources of information, 2) potential initiative partners and 3) carriers of impactful compliance programs.

- **Civil Society as a Source** – The Strategy cites civil society research several times in support of its policies, and then calls on “[d]epartments and agencies [to] work to support and better make use of analysis, conducted by external partners, including the private sector, civil society and media.” As discussed below, the Strategy calls out the important partnership role of the private sector in “countries where governmental cooperation is impractical.”
- **Potential Partners in Advocacy and Initiatives** – The Strategy calls the private sector “full-fledged partners” and looks to “unleash private sector advocacy for anti-corruption reform.” Also, perhaps reflecting the importance of a risk-based approach to anti-corruption, the Strategy calls out two initiatives for increased partnership. Focusing on government procurement and extractives industries, the Strategy commits to “[r]einventing U.S. participation in the Open Government Partnership and Extractive Industries Transparency Initiative.”
- **Incentivizing Corporate Compliance Programs** – The Strategy continues to emphasize the importance of corporate compliance programs and commits to “working with the private sector to improve the international business climate by encouraging the adoptions and enforcement of anti-corruption compliance programs by U.S. and international companies.”

Some sections of the Strategy read as the US government's own compliance program statement, with terminology and techniques reflective of [DOJ's 2020 Effective Compliance Program Guidance Update](#) (the "Guidance"),² including focus on:

- **Risk Analysis** – The Strategy repeatedly focuses on identifying areas of corruption risk, reflecting a prominence similar to the role of "risk assessment" in the Guidance.
- **Tone-at-the-Top and Communication** – The Strategy itself could be interpreted as a "tone-at-the-top" message, but it also recognizes the role of continued communication in setting a culture of compliance and states that "[m]essaging around anti-corruption will be incorporated into public engagements both in the United States and abroad."
- **Risk Mitigation Measures (i.e., Compliance Controls) and Pilot Programs** – The Strategy references risk mitigation measures in existing and new government spending programs (see below), aligning to compliance controls and procedures of the Guidance. The Strategy also embraces a staple of Chief Compliance Officers around the globe: the Pilot Program (i.e., applying new controls and frameworks to a specific scenario with a rapid feedback loop), referring to ongoing pilots in Dominican Republic and the DRC.
- **Data, Metrics and Technology** – While repeatedly emphasizing the calls to data and metrics prominent in the Guidance, the Strategy also looks to use a key focus of Corporate Chief Compliance Officers: technology. Via an emerging technology program, the United States will look "to collaborate on tracking, developing, improving, and applying new and existing technological solutions to systematic challenges in preventing and detecting corruption."
- **Continuous Improvement Feedback Loop** – Just as any good corporate compliance program is always improving and evolving, the Strategy builds "additional flexibility into anti-corruption initiatives and assistance efforts to respond to unexpected openings or backsliding."
- **Governance/Reporting to the Board and KPIs** – Where the Guidance emphasizes compliance reporting, board involvement and ethics embedded into business objectives, the Administration appears to heed its own recommendations and notes, "To hold ourselves accountable, Federal Departments and agencies, coordinated by the National Security Council, . . . will report annually to the President on progress made against the Strategy's goals."
- **Alignment of Corruption and Other Emerging ESG Risks** – The Administration also calls out what compliance officers know well: "Countries with high levels of corruption are more likely to have populations that suffer from human rights abuses, and are less likely to address those abuses." This is where a holistic and integrated approach to enforcement and compliance both align, in leveraging tools and learnings from anti-corruption for application to a broader range of emerging risks. The Administration also intends to work with "stakeholders to leverage increased global interest in environmental, social and governance investing as part of broader discussions on gatekeeping and encouraging clean corporate governance . . . [including] transparency in corporate decision making, board makeup, and executive compensation."

A Follow-the-Money Strategy: Focusing on Anti-Money Laundering, Transparency and Gatekeepers

A critical feature of the Strategy is its "follow-the-money" pillar focused on curbing illicit finance and money laundering by creating greater transparency, targeting gatekeepers and encouraging greater

coordination between the United States and foreign jurisdictions on anti-money laundering issues. The Strategy acknowledges that corrupt actors and their facilitators use the US and international financial systems to obscure their ill-gotten gains. To combat that problem, the Strategy lays out several steps, many of which already have been underway but will now be harnessed to combat corruption—namely, issuing beneficial ownership regulations to create greater transparency, developing regulations targeting reporting of real estate transactions and partnering with other countries to bring greater transparency to the international financial system.

- **Beneficial Ownership Registry and Disclosure Obligations** – The Strategy focuses on the issuance of regulations to encourage beneficial ownership transparency to prevent bad actors from using shell companies to hide their ill-gotten gains. These efforts have been underway since January 2021 with the passage of the Corporate Transparency Act (CTA), enacted as part of the National Defense Authorization Act³ (NDAA). Under the CTA, certain legal entities, including limited liability companies, will be required to register with FinCEN and disclose their ultimate, natural person beneficial owners. The day after the White House announced the Strategy, FinCEN issued a Notice of Proposed Rulemaking⁴ to implement the beneficial ownership information reporting of the CTA, which indicates that FinCEN is forging ahead in implementing the registry.
- **Real Estate Transparency** – The “follow-the-money” pillar of the Strategy also encompasses increased regulations to ensure greater transparency in real estate transactions nationwide. As far back as 2016, FinCEN issued a Geographical Targeting Order in several major metropolitan areas with lucrative real estate markets requiring US title insurance companies to identify the natural persons behind legal entities (US and non-US) used in certain “all-cash” purchases of residential real estate and to report these persons and purchases to FinCEN. The same day that the Strategy was announced, FinCEN solicited public comment⁵ on how it should impose recordkeeping and reporting requirements on certain persons involved in all-cash real estate transactions. Under this proposed rubric, all-cash real estate transactions nationwide would be subject to these disclosure obligations.
- **Art and Antiquities Reporting** – Recent corruption cases have shown that the US art market is easily exploited by money launderers because of its lack of reporting requirements, the anonymity of art buyers and the ability to use shell companies and intermediaries to channel funds for purchases, all of which shroud the industry in secrecy. As a result, the Anti-Money Laundering Act of 2020 (AMLA), also enacted as part of the NDAA, which introduced several key changes affecting anti-money laundering policies, made antiquities dealers’ sales of antiquities subject to reporting requirements under the Bank Secrecy Act. The AMLA also indicated that regulation of the broader art market may be forthcoming in the near future, ensuring greater transparency in the high-value art market.
- **Targeting Gatekeepers** – With expanded reporting requirements comes greater accountability. Recognizing this, the “follow-the-money” pillar of the Strategy commits to increased accountability for gatekeepers such as lawyers, accountants, and trust and company service providers. Gatekeepers who do not comply with their reporting requirements will be subject to liability. This enforcement priority was reflected in the SEC’s the Division of Examinations risk alert⁶ published in March 2021 detailing the AML obligations of broker-dealers. And it was further reiterated recently by Gurbir Grewal, director of the SEC’s Division of Enforcement, who highlighted the role of gatekeepers in rooting out corruption by noting the SEC will address the need to protect investors from fraudsters and kleptocrats globally by increasing gatekeeper accountability for auditors and lawyers as an enforcement priority. This trend of encouraging gatekeepers to root out foreign government

corruption is also reflected by the Kleptocracy Asset Recovery Rewards Act⁷ under the AMLA, which is a pilot program aimed at detaining “stolen assets”—that is, funds traceable to foreign government corruption—that are held at US financial institutions and found in the United States or in the possession of US persons.

- **International Coordination** – A prominent feature of the Strategy, which is also addressed by the AMLA, is the coordination of the United States with its partner countries to strengthen anti-money laundering regimes and accountability through greater enforcement. The AMLA facilitates this objective in several key ways: sharing suspicious activity reports with foreign partners; deploying Treasury Department attachés and FinCEN foreign intelligence unit liaisons to be stationed at US embassies or foreign government facilities throughout the world for the purpose of working together to strengthen anti-money laundering legal frameworks; and granting federal prosecutors the power to subpoena foreign banks that maintain correspondent accounts in the United States, giving DOJ a powerful tool to root out money laundering in the international financial system.
- **Aggressive Enforcement** – At the heart of this pillar is the specter of increased enforcement. FinCEN, an important partner to law enforcement, in addition to receiving expanded regulatory responsibilities under the AMLA received additional resources. In June 2021, FinCEN issued its first government-wide priorities for anti-money laundering. Notably, corruption⁸ was at the top of the list. In addition to the investigative tools provided by the AMLA such as expanded subpoena power to foreign banks, increased transparency in financial transactions will translate to greater information to law enforcement that can be harnessed to investigate and root out bad actors’ and kleptocrats’ efforts to hide their illicit gains.

The Strategy is not the first time this Administration has publicly highlighted anti-money laundering as an important tool for fighting corruption. Recently, at ACI’s 2021 FCPA Conference, David Last, the chief of the Fraud Section’s FCPA unit, said that DOJ will “follow the money” to root out misconduct, confirming that money laundering and related charges are top of mind for the FCPA Unit. The FCPA Unit’s enforcement efforts, combined with the SEC and DOJ’s Money Laundering and Asset Forfeiture’s focus on these issues portends increased enforcement activity in the area of corruption-related money laundering.

Tailored Diplomatic Approaches for Friends and Foes: Increased Diplomacy With the Like-Minded or Sanctions and Protection of Whistleblowers for the Recalcitrant

Transnational coordination and cooperation is a recurring theme in the Strategy, as is “preserving and strengthening the multilateral anti-corruption architecture.” However, just as compliance programs must be tailored to local risk, the Strategy notes “elevating corruption as a diplomatic priority in a manner tailored to local conditions.” The Strategy describes two clear categories of country counterparts: partners in the fight against corruption and those that present a challenge to it. There is also a coordinating carrot and stick approach. Where partners can expect resources, sharing and support, corruption enablers can expect sanctions. The Administration is “launching an interagency Democracies against Safe Havens Initiative, led by State, that will engage partner countries to coordinate action on law enforcement, sanctions, and visa restrictions implementation and on detecting and disrupting kleptocracy and foreign bribery.”

In addition, where government-to-government cooperation is a challenge, the Strategy looks to support and protect civil society actors within these enabling jurisdictions. “[T]he United States will also continue to expand partnerships and leverage the contributions of non-government actors, such as

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civil society, investigative media and the private sector[,] in the fight against corruption impunity, especially in counties where governmental cooperation is impractical.”

The Administration, perhaps looking to the success of the recently updated SEC's Whistleblower Program,⁹ is also looking to encourage active whistleblowing in challenging jurisdictions. Not only does the Administration commit to “protect anticorruption actors and defend the freedom of expression of anticorruption activists, whistleblowers and investigative journalists,” but the Strategy looks to “establish a kleptocracy asset recovery rewards program that will enhance the U.S. Government's ability to identify and recover stolen assets linked to foreign government corruption . . .”

We can expect the State Department and ambassadors to put anti-corruption messaging at the front of their agendas in dealing with foreign governments, as well as encouragement to US companies and chambers of commerce globally to report information about potential corrupt conduct to US embassies as a point of escalation.

Integration Across Biden Administration Programs: *Strategic Government Program Spending Increasing Corruption Touchpoints*

In keeping with the Strategy's overarching messaging around a holistic approach, greater integration of corruption-related concerns can be expected as to the current Administration's priorities across the board. The Administration will be using the Strategy to support current and proposed Administration programs and provide an outline for enhanced compliance controls and enforcement, including for:

- ***International Assistance and Government-to-Government Support*** – Benefiting from, for example, USAID's new and expanded programs and funding (including the Combating Transnational Corruption Grand Challenge and Empowering Anti-Corruption Change Agents Program, Global Accountability Program and Anti-Corruption Response Fund).
- ***COVID Relief*** – Via curbing corruption relating to COVID-19 response efforts, citing an example in Peru, where USAID leveraged citizen engagement to improve public integrity and reduce government corruption in disaster and pandemic response efforts.¹⁰
- ***Infrastructure and “Build Back Better”*** – As part of the Build Back Better World agenda, working with allies and partners to both fund and provide government-to-government technical assistance to ensure partners are able to complete related infrastructure projects efficiently and accountably.
- ***Climate Action Funding*** – Incorporating anti-corruption considerations into US initiatives providing \$11 billion in climate finance to support climate action in developing nations to ensure that those funds achieve their intended purpose.

Without direct reference to the Afghanistan withdrawal, the Strategy also looks into enhance corruption controls in US defense spending, including in:

- ***Direct Defense Spending and Internal Assistance*** – Via, for example, developing protocols for interagency analysis and assessment of corruption risk before new or large security assistance activities are initiated.
- ***Defense Contractor and Supply Chain Requirements*** – Excluding corrupt companies and actors from US government contracts, subcontracts, grants and related business opportunities, including via, for example, the Interagency Suspension and Debarment Subcommittee led by the Department of the Air Force.

With government touchpoints and potential for misappropriation and corruption across a broad range of priorities and programs recognized, companies from all industries involved in US government programs and contracting are well advised to revisit their compliance controls.

Finally, companies can expect that enforcement will also take into account Administration priorities—from climate impact to diversity, inclusion and equity. The Strategy foreshadows how these issues could be not only policy drivers but enforcement influencers as it notes that corruption:

- “impacts vulnerable groups at a disproportionate rate . . .”;
- “curtails the ability of states to respond effectively to public health crises and to address climate change, migration, and inequities of all forms . . .”; and
- makes states “more vulnerable to terrorist networks, transnational organized and gang related criminal and human traffickers.

Mayer Brown's global team of lawyers are well positioned to assist our clients navigating this new corruption strategy. To continue the discussion, please contact:

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Endnotes

- ¹ See: https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/11/acr_the-accountability-message-what-doj-policy.pdf.
- ² See: <https://www.mayerbrown.com/en/perspectives-events/publications/2020/06/quick-compliance-takeaways-from-doj-recent-guidance-updates>.
- ³ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2021/04/fincen-moves-to-implement-the-corporate-transparency-act>.
- ⁴ See: <https://www.fincen.gov/news/news-releases/fincen-issues-proposed-rule-beneficial-ownership-reporting-counter-illicit>.
- ⁵ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2021/12/new-real-estate-reporting-requirements-under-consideration-by-fincen>.
- ⁶ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2021/04/sec-division-of-examinations-publishes-risk-alert-on-broker-dealer-aml-practices>.
- ⁷ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2021/07/fincens-firstever-national-amlcft-priorities-provide-insights-into-key-threats>.
- ⁸ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2021/07/fincens-firstever-national-amlcft-priorities-provide-insights-into-key-threats>.
- ⁹ See: <https://www.mayerbrown.com/en/perspectives-events/publications/2020/09/sec-amends-whistleblower-program>; and <https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/10/gir-jac--inhouse-lessons-from-the-secs-whistleblower-rule-updates.pdf>.
- ¹⁰ On the US domestic front, for a summary of US CARES Act Provisions, see: <https://www.mayerbrown.com/en/perspectives-events/publications/2020/04/summary-of-cares-act-state-and-local-government-relief-provisions>.

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