BIDEN ADMINISTRATION IDENTIFIES GLOBAL CORRUPTION AS A NATIONAL SECURITY ISSUE

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In a move long expected by this firm and other experts in this area, on 3 June 2021, the Biden administration issued a policy statement tethering global anti-corruption efforts as vital to the country's national security interests. This announcement is consistent with anti-corruption experts' expectations that the Biden administration would incentivize the federal government to increase its efforts in the fight against global corruption. In his first National Security Study Memorandum, President Biden outlined 10 goals for his administration's efforts to fight cross-border corruption:

1. Enhance resources available to key agencies involved in the fight against corruption;
2. Robust implementation of federal law requiring companies to report beneficial ownership to the U.S. Department of the Treasury, increase transparency, and improve information sharing;
3. Utilize criminal and civil enforcement actions, sanctions, and increased cooperation to hold individual and corporate bad actors accountable, including the return of recovered assets to the victims of corruption, where possible;
4. Increase the capabilities of “domestic and international institutions and multilateral bodies” as well as financial institutions to promote financial transparency and “where possible, address[] the demand side of bribery;”
5. Enable independent oversight actors in “civil society,” such as the media, to advocate, research, investigate, and inform the public on accountability efforts;
6. “Close[] loopholes” exploited by foreign leaders and state-owned enterprises to interfere in the democratic process;
7. Augment assistance for foreign countries in need of resources to combat corruption locally;
8. Increase the capability of state, local, and foreign authorities to identify and investigate corruption and financial irregularities;
9. Enhance efforts to partner with companies as part of anti-corruption measures in with the private sector; and
10. Work toward the creation of anti-corruption best practices to facilitate foreign assistance and security cooperation activities.[1]

The policy memorandum also includes concrete action, as the White House gave federal agencies a 200-day period to review their current efforts to fight corruption abroad and provide a report with recommendations on how

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the United States can tackle illicit financing schemes and build international relationships to combat corruption. The results of the review will be due on Monday, 20 December 2021.

Notably, the Biden administration's policy statement envisages increased involvement of nongovernmental entities in the fight against corruption. In addition to promoting anti-corruption partnerships with the private sector, the memorandum directs the United States to "[b]olster the capacity of domestic and international institutions and multilateral bodies[;] . . . [s]upport and strengthen the capacity of civil society, media, and other oversight and accountability actors[; and] . . . [w]ork with international partners to counteract strategic corruption." Multilateralism and partnerships with other governments to tackle corruption will also remain a priority for the Biden administration.

Finally, the memorandum aims to enhance ongoing efforts by the Treasury Department to build a beneficial ownership register that would prohibit hiding proceeds from corruption behind shell companies and special-purpose vehicles. These efforts include requiring U.S. companies to report beneficial ownership to the Treasury Department.

While the novelty of agency recommendations remains to be seen and the implementation actions of the Biden administration may not be realized until 2022 and beyond, this policy statement reflects the administration's prioritization of fighting cross-border corruption and its desire for multilateral solutions to multilayered schemes. Recent public remarks by the acting head of the U.S. Department of Justice's Criminal Division, which preceded the issuance of policy memorandum by a day, also suggest that the Biden administration will seek to leverage data analytics and relationships with international enforcement partners more aggressively than ever to develop leads in Foreign Corrupt Practices Act (FCPA) investigations, anti-money laundering cases, and other corporate enforcement efforts.[2]

In light of this memo, the Corporate Transparency Act implementation efforts, and the renewed focus on the FCPA, companies operating abroad in higher risk markets, either directly or indirectly through third parties, should prioritize reviewing and enhancing their compliance programs. Proper internal controls and policies will be key in identifying and preventing corruption. Furthermore, multinationals should be aware that increased resources for nongovernmental corruption watchdogs, either in the form of whistleblowers or the media, reinforce the need for internal accountability measures that accurately assess risk and meaningfully address conduct that runs counter to applicable laws, regulations, or corporate policies. Moreover, companies that contract with subcontractors or third parties in high corruption index countries need to continue to strictly follow policies to protect companies from illegal financing schemes. Given the Biden administration's support for law enforcement taking up the fight against global corruption, it is more important than ever to avoid a protracted, expensive investigation through compliance, planning, training, and due diligence efforts.

FOOTNOTES

[1] *Presidential Actions, Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest* (June 3, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/.

[2] Clara Hudson, *FCPA Enforcement is "in an entirely new" place, says acting criminal division chief, Glob.*

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Investigations Rev. (June 2, 2021), https://globalinvestigationsreview.com/just-anti-corruption/fcpa/fcpa-enforcement-in-entirely-new-place-says-acting-criminal-division-chief.

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