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NEWS

WHITE HOUSE ANNOUNCES EFFORT TO DEVELOP A PRESIDENTIAL STRATEGY TO COMBAT DOMESTIC AND INTERNATIONAL CORRUPTION

On June 3, 2021, U.S. President Joe Biden issued a national security memorandum on “Establishing the Fight Against Corruption as a Core United States National Security Interest.” This first national security memorandum of President Biden’s administration references the “staggering” cost of international corruption and the threat to “United States national security, economic equity, global anti-poverty and development efforts, and democracy itself.”

The memorandum directs administration officials to perform an interagency review to “develop a Presidential strategy that will, when implemented, significantly bolster the ability of the United States Government” to “promote good governance and prevent and combat corruption,” “[c]ombat all forms of illicit finance,” and “[h]old accountable corrupt individuals, transnational criminal organizations, and their facilitators.” President Biden’s National Security Advisor is further instructed to complete the interagency review within 200 days and submit a report and recommendations to President Biden for review and adoption.

Expanding Anti-Corruption Efforts

Framing anti-corruption efforts as a “national security interest” sends a message that President Biden considers the fight against corruption to be a core concern of his administration. However, the effect of the memorandum will also be to force greater coordination among the disparate intelligence, legal, military, and financial agencies within the government that historically may not have collaborated or focused on combatting corruption.

Additionally, in the opening paragraphs of the memorandum, President Biden speaks of “authoritarian leaders” who “undermine democracies” and “oligarchs [who] flout the rule of law” and specifically calls out the “opaque financial system[s] and professional service providers [that] enable the movement and laundering of illicit wealth, including in the United States.” As a result, the administration appears poised not only to target corrupt foreign government officials themselves, but also to increase focus on the financial systems that allow those officials to move and benefit from illicit funds.



New Enforcement Partnerships and Tools

To achieve these goals, the memorandum calls for “robustly implementing Federal law requiring United States companies to report their beneficial owner or owners to the Department of Treasury” and “reduc[e] offshore financial secrecy.” This “robust” implementation of federal law almost certainly refers to recent efforts by the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) to implement the Corporate Transparency Act (CTA), including the creation of a beneficial owner disclosure program. The CTA defines “beneficial owner” as “an individual who, directly or indirectly, through any contract arrangement, understanding, relationship, or otherwise” “exercises substantial control over the [reporting] entity” or “owns or controls not less than 25 percent of the ownership interest of the entity.” The reports from this program will not be publicly available but likely will be available to other government agencies.

With the implementation of the CTA, FinCEN is expected to increase coordination with the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), which, as the principal historical mechanisms for anti-bribery and anti-corruption enforcement, will likely be major components of any concrete recommendations stemming from the interagency review. Armed with FinCEN’s new reporting requirements and the President’s directive to coordinate with international anti-corruption partners, the DOJ and SEC will have an opportunity to expand their reach and scope. For example, while many Foreign Corrupt Practices Act (FCPA) matters currently arise out of an internal whistleblower or a voluntary corporate disclosure, an increase in interagency cooperation may lead to new sources of potential cases for the DOJ and SEC’s FCPA units.

Additionally, the memorandum’s focus on targeting both corrupt foreign government officials as well as the financial institutions that facilitate their illicit acts may result in increased cooperation within the DOJ itself, including among the DOJ’s Public Integrity Section, the Money Laundering and Asset Recovery Section, and the Market Integrity and Major Frauds Unit. Nevertheless, as a result of the increased scrutiny and coordination envisioned in the memorandum, it will be vital for corporations and financial institutions to continually improve and enforce their compliance controls in order to mitigate exposure to the enhanced corruption enforcement efforts highlighted by President Biden.

IN THE INTERIM

4/15/2021: Jose Carlos Grubisich, a Brazilian national who previously served as the CEO of Braskem S.A. (Braskem), a publicly traded Brazilian petrochemical company, pleaded guilty to conspiring to divert hundreds of millions of dollars from Braskem into a secret slush fund and to pay bribes to government officials, political parties, and others in Brazil to obtain and retain business. According to court documents, between approximately 2002 and 2014, Grubisich and his co-conspirators diverted approximately \$250 million from Braskem into a secret slush fund, which Grubisich and others had generated through fraudulent contracts and offshore shell companies secretly controlled by Braskem. Grubisich also admitted that while serving as Braskem’s CEO, he agreed to pay bribes to Brazilian government officials to ensure Braskem’s retention of a contract for a significant petrochemical project from Petroleo Brasileiro S.A. (Petrobras). For his conduct, Grubisich agreed to pay approximately \$2.2 million in forfeiture.

<https://www.justice.gov/opa/pr/former-chief-executive-officer-publicly-traded-petrochemical-company-pleads-guilty-foreign>

“...as a result of the increased scrutiny and coordination envisioned in the memorandum, it will be vital for corporations and financial institutions to continually improve and enforce their compliance controls in order to mitigate exposure to the enhanced corruption enforcement efforts highlighted by President Biden.”



4/27/2021: Donville Inniss, the former Minister of Industry for Barbados as well as an elected member of Barbados's Parliament, was convicted by a federal jury of two counts of money laundering and one count of conspiracy to commit money laundering on January 16, 2020. According to the evidence presented at trial, in 2015 and 2016, Inniss took part in a scheme to launder approximately \$36,000 in bribes that he had received from high-level executives of the Insurance Corporation of Barbados Limited (ICBL). In exchange for the bribes, Inniss leveraged his position as the Minister of Industry to enable ICBL to obtain two insurance contracts from the Barbados government to insure over \$100 million worth of government property. To conceal the bribes, Inniss arranged to receive them through a U.S. bank account in the name of his friend's dental company. In addition to the prison sentence, the court ordered Inniss to forfeit \$36,536.73.

<https://www.justice.gov/opa/pr/former-minister-industry-and-member-parliament-barbados-sentenced-laundering-bribes>

4/28/2021: The UK's Serious Fraud Office announced that GPT Special Project Management pleaded guilty to corruption between December 2008 and July 2020 in relation to contracts awarded to GPT for work performed for the Saudi Arabian National Guard. In sentencing GPT, the judge ordered the company to pay a confiscation order of approximately £20 million, a fine of approximately £7 million, and more than £2 million in costs.

<https://www.sfo.gov.uk/2021/04/28/gpt-pleads-guilty-to-corruption/>

On May 27, Jeffrey Cook, a former GPT executive, and John Mason, the former financial officer at two GPT subcontractors, entered not guilty pleas for corruption charges linked to contracts awarded to GPT related to work performed for the Saudi Arabian National Guard between January 2007 and December 2012. Cook also faces a charge of misconduct in public office related to receiving cash for GPT contracts between 2004 and 2008. Another man, Terence Dorothy, was charged with aiding and abetting related corruption in connection with this matter but has not yet entered a plea.

5/19/2021: The SEC announced a whistleblower award totaling more than \$28 million in connection with the April 2018 enforcement actions by the DOJ and SEC against a Japan-based company that makes aircraft entertainment and communication systems. The whistleblower, who was not an employee, notified the SEC about alleged wrongdoing in countries in Asia and Europe, prompting the regulator to open the investigation.

5/24/2021: Mahamoud Adam Bechir, the Republic of Chad's former Ambassador to the United States and Canada, and Youssef Hamid Takane, Chad's former Deputy Chief of Mission for the United States and Canada, were charged with soliciting and accepting a \$2 million bribe from a Canadian startup energy company and conspiring to launder the bribe payment to conceal its true nature. According to court documents, Bechir and Takane engaged in this scheme between August 2009 and July 2014, while serving as diplomats based out of Chad's embassy in Washington, D.C. According to the indictment, Bechir and Takane demanded the bribe from the Canadian startup energy company in exchange for a promise to misuse their official positions to assist the startup energy company in obtaining oil rights in Chad. Naeem Tyab, a citizen of Canada and founding shareholder of the startup energy company, was also charged for allegedly arranging for the bribe to be paid to Bechir's wife, co-defendant Nouracham Bechir Niam, via a sham contract for consulting services that she never actually provided. Tyab, as part of a plea agreement, has agreed to forfeit about \$27 million.

<https://www.justice.gov/opa/pr/charges-unsealed-against-former-chadian-diplomats-us-charged-connection-international-bribery>



5/24/2021: Arturo Carlos Murillo Prijic (Bolivia's former Minister of Government), Sergio Rodrigo Mendez Mendizabal (Murillo's former Chief of Staff of the Ministry of Government), Luis Berkman, Bryan Berkman, and Philip Lichtenfeld were charged for their alleged roles in a bribery and money-laundering scheme. According to court documents, between approximately November 2019 and April 2020, both Berkman and Lichtenfeld paid \$602,000 in bribes to Bolivian government officials for the benefit of Murillo, Mendez, and another Bolivian government official. The bribes were paid so that Bryan Berkman's Florida-based company would obtain and retain business from the Bolivian Ministry of Defense.

<https://www.justice.gov/opa/pr/former-minister-government-bolivia-owner-florida-based-company-and-three-others-charged>

5/25/2021: Peter Weinzierl, the chief executive officer at a defunct Anglo Austrian bank formerly called Meindl Bank, was arrested and charged for his alleged participation in a massive money-laundering scheme involving Odebrecht, a Brazilian global construction conglomerate. An unsealed indictment also charged Alexander Waldstein, a one-time officer at the defunct bank. According to the indictment, Weinzierl and Waldstein conspired with Odebrecht and others to launder money in a scheme between 2006 and 2016 to defraud Brazil's tax authority of more than \$100 million in taxes and to create slush funds used by Odebrecht to pay hundreds of millions of dollars in bribes for the benefit of public officials around the world. Weinzierl and Waldstein also caused millions of dollars in criminal proceeds to be transferred from an Antiguan bank to a brokerage account located in the U.S. to purchase U.S. Treasury securities and corporate stocks and bonds on U.S. exchanges. In exchange for their role in the scheme, Weinzierl and Waldstein collected substantial fees for the benefit of the Austrian and Antiguan banks.

<https://www.justice.gov/opa/pr/two-bank-executives-charged-conspiring-launder-hundreds-millions-dollars-through-us-financial>

5/27/2021: Bank Julius Baer & Co. Ltd, a Swiss bank with international operations, entered into a three-year deferred prosecution agreement with the DOJ and admitted to conspiring to launder over \$36 million in bribes through the U.S. to FIFA soccer officials and other soccer federations in furtherance of a scheme in which sports marketing companies bribed soccer officials in exchange for broadcasting rights to soccer matches. The bank has agreed to pay more than \$79 million in fines and forfeiture.

<https://www.justice.gov/opa/pr/bank-julius-baer-agrees-pay-more-79-million-laundering-money-fifa-scandal>

6/2/2021: Avianca Holdings, a Colombian airline, disclosed that the SEC has dropped its investigation into alleged grants of free and discounted tickets and upgrades to government officials in certain countries and will not recommend an enforcement action. Avianca had self-reported to the DOJ and SEC in August. The company did not give an update on the status of the DOJ investigation.

<https://sec.report/Document/0001193125-21-180176/>

6/3/2021: As described in more detail in the previous article, President Biden issued his first national security memorandum, outlining his anti-corruption agenda.

<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/>



6/3/2021: The United Nations (UN) Office on Drugs and Crime (UNODC) has launched its Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network) dedicated to investigating and prosecuting corruption. The network will enable UN member states and states party to the UN Convention Against Corruption to pursue corruption cases in real time. The GlobE Network has three components: (1) an online hub combining digital tools where anti-corruption investigators can connect to their counterparts in different countries via a secure channel; (2) plans to maintain an office of anti-corruption experts at the UNODC division in Vienna; and (3) “knowledge and capacity development,” which involves working with academics to develop anti-corruption tools and training law enforcement and prosecutors.

<https://globenetwork.unodc.org/>

6/16/2021: The World Bank Group announced the two-year debarment of China-based Zhejiang First Hydro & Power Construction Group Co. (First Hydro) in connection with fraudulent and corrupt practices connected to a project in China. First Hydro’s de facto agent and subcontractor offered and paid bribes to two government officials in exchange for a contract. First Hydro also misrepresented its intent to mobilize the resources required to implement the contract as well as the availability of experts proposed in its bid. As part of the settlement, First Hydro committed to continue fully cooperating with the World Bank Group Integrity Vice Presidency but is ineligible to participate in projects and operations financed by the World Bank Group for a two-year period.

<https://www.worldbank.org/en/news/press-release/2021/06/16/world-bank-group-debars-zhejiang-first-hydro-power-construction-group-co>

6/25/2021: The SEC announced charges against Amec Foster Wheeler Limited (Foster Wheeler), a company that provided project, engineering, and technical services to energy and industrial markets worldwide, for violations of the FCPA arising out of a bribery scheme that took place in Brazil, known as the UFN-IV Project. According to the SEC order, from 2012 through 2014, Foster Wheeler’s UK subsidiary, Foster Wheeler Energy Limited, made improper payments of approximately \$1.1 million to Brazilian officials in connection with its efforts to win an oil and gas engineering and design contract from Petrobras and to establish a business presence in Brazil. The bribes were paid through third-party agents, including one agent who failed Foster Wheeler’s due diligence process but was nonetheless allowed to continue working “unofficially” on the UFN-IV Project. For its conduct, Foster Wheeler agreed to pay more than \$43 million, including more than \$10.1 million to settle the SEC charges.

<https://www.sec.gov/litigation/admin/2021/34-92259.pdf>

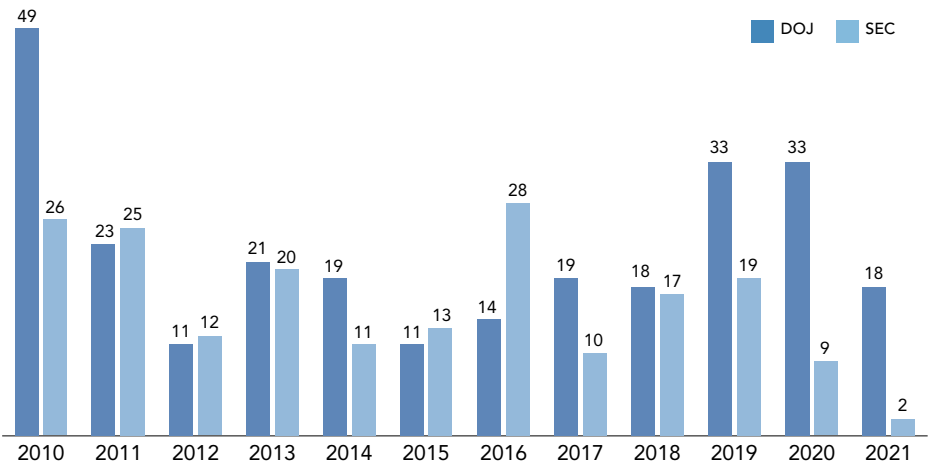
In a related settlement, Foster Wheeler entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay approximately \$18.4 million. The DOJ reached this resolution based on a number of factors, including Foster Wheeler’s failure to voluntarily and timely disclose the conduct that triggered the investigation; the nature and seriousness of the offense, which spanned multiple years and involved a high-level executive; and credit for the company’s cooperation. Foster Wheeler also implemented remedial measures, including terminating an individual involved in the misconduct and adopting heightened controls and anti-corruption procedures.

<https://www.justice.gov/opa/pr/amec-foster-wheeler-energy-limited-agrees-pay-over-18-million-resolve-charges-related-bribery>



FCPA GOVERNMENT INVESTIGATIONS AND CORPORATE SETTLEMENTS

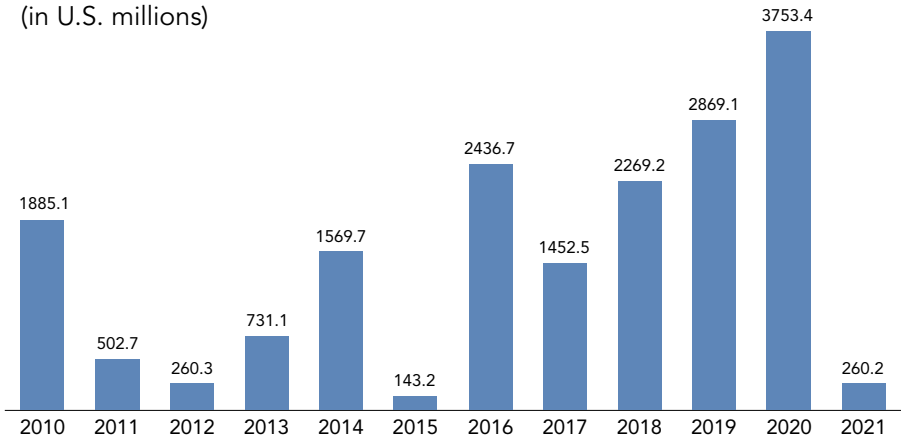
FCPA-Related Cases*



* New criminal or civil cases (settled or contested) instituted by year

Corporate FCPA-Related Penalties*

(in U.S. millions)



* Includes disgorgement; does not include non-U.S. fines



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