

FRENCH COMPLIANCE SOCIETY

Biden's Anti-Corruption Strategy: A Paradigm Shift in National Security



SPONSORED BY

EQS GROUP

Rob Lindquist is currently a member of the adjunct faculty of the University of California, Irvine School of Law and founder and President of Pragmatic Compliance Inc. In his legal career spanning more than four decades, Rob has served as the Chief Compliance Officer of two multi-national corporations, most recently leading Panasonic Avionics through the resolution of its FCPA investigation by the DOJ and SEC. In 2016 he received the Global Counsel of the Year for Competition Law award from the Association of Corporate Counsel. Rob has held the position of Chair of the Antitrust Section of the Los Angeles County Bar Association, Vice Chair of the State Bar of California Antitrust Section and President of the Southern California Chapter of the Association of Corporate Counsel. He is a graduate of the University of Texas School of Law.

HOW SIGNIFICANT IS THE BIDEN ADMINISTRATION'S DECLARATION THAT CORRUPTION CONSTITUTES A NATIONAL SECURITY THREAT? WHAT ARE THE POTENTIAL IMPLICATIONS OF THIS PERSPECTIVE?

The Biden Administration's embrace of anti-corruption efforts as important for U.S. national security is complete about-face from the Trump administration's indifference to the topic (and Trump's personal hostility to the law). Reorienting a vast bureaucracy such as the U.S. Government takes time and, interestingly, the number of corruption enforcement actions in 2022 is lower than in 2019 during the Trump administration.

THE STRATEGY EMPHASIZES THE NEED FOR A "WHOLE-OF-GOVERNMENT" APPROACH TO FIGHTING CORRUPTION. IN YOUR OPINION, WHAT ARE THE ADVANTAGES OF SUCH AN APPROACH, AND HOW CAN DIFFERENT GOVERNMENT DEPARTMENTS EFFECTIVELY COLLABORATE IN COMBATING CORRUPTION?

The US government, probably like most governments is beset by "fiefdoms" of individual agencies focusing on protecting their bureaucratic turf. In the case of U.S. anticorruption efforts, this is evident by sharing of anticorruption jurisdiction by an executive agency, the U.S. Department of Justice, and an independent commission, the Securities and Exchange Commission. The "whole of government approach" to fighting corruption requires coordination with the Director of National Intelligence, the Office of Foreign Asset Controls ("OFAC") of the Department of Treasury, the Financial Crimes Enforcement Network ("FinCEN") of the Department of Treasury, the Bureau of Industrial Security of the Department of Commerce, the Criminal Division of the U.S. Department of Justice and the U.S. Department of State. Cutting through these fiefdoms will require persistence and attention from the very top of the administration. As evidence that such coordination can occur in response to executive leadership, currently OFAC, BIS, and FinCEN have coordinated in issuing new controls and alerts to thwart Russian evasion of existing sanctions imposed because of the Ukraine invasion.

[Read More](#)

PILLAR 1 OF THE STRATEGY FOCUSES ON MODERNIZING, COORDINATING, AND RESOURCING U.S. GOVERNMENT EFFORTS TO FIGHT CORRUPTION. COULD YOU DISCUSS THE IMPORTANCE OF GATHERING INTELLIGENCE ON CORRUPT ACTORS AND ENHANCING INFORMATION SHARING BETWEEN THE INTELLIGENCE COMMUNITY AND LAW ENFORCEMENT?

This approach would supercharge the U.S. government's anticorruption efforts, as enforcement till now as depended largely on self-disclosure by offending corporations or tips from whistleblowers. In March 2023, the Biden Administration released a "FACT SHEET: Implementing the United States Strategy on Countering Corruption: Accomplishments and Renewed Commitment in the Year of Action" touting efforts in this regard but there has been no significant uptick in anti-corruption enforcement actions so far. In fact, there were fewer enforcement actions in 2022 than in 2019 under the Trump administration.

HOLDING CORRUPT ACTORS ACCOUNTABLE IS A CENTRAL ASPECT OF PILLAR 3. HOW CAN THE ADMINISTRATION ENFORCE EXISTING LAWS SUCH AS THE FOREIGN CORRUPT PRACTICES ACT (FCPA) MORE VIGOROUSLY, AND WHAT ARE THE POTENTIAL CHALLENGES IN PROSECUTING FOREIGN PUBLIC OFFICIALS WHO DEMAND BRIBES?

In this area, the Biden Administration has reemphasized the prosecution of individuals, as opposed to corporate entities, for bribery offenses. On September 15, 2022, Deputy Attorney General Lisa Monaco announced changes to the U.S. Department of Justice's corporate criminal enforcement policies in which the Departments "first priority" in dealing with corporate crime is to "hold accountable the individuals who commit and profit from corporate crime." In order to receive any cooperation credit from the government, businesses must disclose all "relevant, non-privileged facts" about individual misconduct.

As to punishing the recipients of bribes (the so-called demand side of corruption), however, this remains a big gap in US anti-corruption enforcement because the key federal law, the Foreign Corrupt Practices Act (FCPA), does not provide for punishment of the recipients of the bribes.

IN YOUR VIEW, WHAT ARE THE MOST SIGNIFICANT STRENGTHS AND POTENTIAL LIMITATIONS OF THE BIDEN ADMINISTRATION'S ANTI-CORRUPTION STRATEGY? WHAT OUTCOMES CAN BE REALISTICALLY EXPECTED FROM THESE EFFORTS, CONSIDERING THE COMPLEX NATURE OF CORRUPTION AND ITS WIDE-RANGING SOCIETAL IMPACT?

The Biden Administration's embrace of anti-corruption efforts as important for U.S. national security is complete about-face from the Trump administration's indifference to the topic. That alone is a profound development. It is fair to say, however, that Russia's invasion of the Ukraine has diverted much of the U.S. enforcement attention resources on anti-moneylaundering, sanctions evasion and anti-corruption to combatting Russian efforts to evade the various sanctions imposed on it. This diversion of resources and attention will probably diminish the immediate impact of the Biden administration's embrace of anti-corruption efforts.

LASTLY, AS A FORMER COMPLIANCE OFFICER, WHAT PRACTICAL ADVICE OR RECOMMENDATIONS WOULD YOU OFFER TO BUSINESSES AND INDIVIDUALS TO STRENGTHEN THEIR COMPLIANCE WITH ANTI-CORRUPTION LAWS AND CONTRIBUTE TO THE BROADER EFFORTS AGAINST CORRUPTION?

First of all, it is to embrace the idea that anticorruption efforts, either by a business or an individual, makes the world a better place. Anticorruption compliance is not simply a technical matter like complying with tax laws but, rather, an effort to create a fair and more just to world.

Of course, a good compliance officer needs to keep up on regulatory developments such as the March 2023 revisions of the U.S. Department of Justice's compliance program guidelines. Just as important, I would argue, is also keeping abreast of recent enforcement actions such as Deferred Prosecution Agreements. The announcement of these actions generally includes description of the misconduct involved in the violations and these fact patterns often give practical insights into what focus on in your own companies.

One final bit of advice I would give to compliance officers is to focus much of their efforts on convincing the leaders within their companies to embrace the anticorruption program. From my many decades, in anticorruption work, I've have found that the most effective tool for achieving compliance within the organization is the support of top management. Without, top management support, you face the very real risk of creating simply a "paper" program.