Volume 1, Number 3 May–June 2024

# THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL



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The Global Regulatory Developments Journal

Volume 1, No. 3 May–June 2024

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Publishing Staff
Publisher: Morgan Morrissette Wright
Production Editor: Sharon D. Ray
Cover Art Design: Morgan Morrissette Wright and Sharon D. Ray

The photo on this journal's cover is by Gaël Gaborel—A Picture of the Earth on a Wall—on Unsplash

Cite this publication as:

The Global Regulatory Developments Journal (Fastcase)

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https://www.fastcase.com/

POSTMASTER: Send address changes to THE GLOBAL REGULATORY DEVELOPMENTS JOURNAL, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

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ISSN 2995-7486

# The Long Arm of the Law Just Got Longer: Five Things Businesses Need to Know About the U.S. Foreign Extortion Prevention Act

Raymond W. Perez and Nan Sato*

*In this article, the authors discuss the implications of the Foreign Extortion Prevention Act, which now subjects foreign public officials to jail time and fines if they receive or request a bribe from a U.S. company seeking to do business in their country.*

U.S. companies that do business globally may need to update their compliance training to ensure employees operating in international venues understand new risks. For decades, the Foreign Corrupt Practices Act (FCPA) has made it unlawful for U.S. companies to offer bribes to foreign public officials to obtain business in other countries—and now a new law subjects foreign public officials to jail time and fines if they receive or request a bribe from a U.S. company seeking to do business in their country.

Specifically, the Foreign Extortion Prevention Act (FEPA)—which President Biden recently signed into law—now criminalizes the "demand side" of a foreign bribery scheme.

Here are five things business leaders with international operations need to know about the new law.

## DOJ Has More Power to Fight Corruption

President Biden signed the FEPA into law on December 23, 2023, after it was approved with bipartisan support in Congress. The new law has been high on the agenda of anti-bribery advocates who previously relied on anti–money laundering and wire fraud laws to pursue international officials. Now, the U.S. Department of

*The Global Regulatory Developments Journal* / May–June 2024, Vol. 1, No. 3, pp. 203–205.
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ISSN 2995-7486.

Justice (DOJ) will be able to bring charges directly against foreign officials to fight global corruption.

## Foreign Officials Face Jail Time and Steep Penalties for Violations

FEPA makes it unlawful for a foreign official to corruptly demand, seek, receive, accept (directly or indirectly) anything of value in return for being influenced in the performance of their duties—or to confer an improper advantage in connections with obtaining or retaining business in their country. The penalties include individual jail terms of up to 15 years and fines of up to $250,000 or three times the equivalent of the bribe.

## Lack of Clarity May Spark Litigation

In many ways the law mirrors the FCPA, but there are some important differences. First, although the new law also targets public officials, it goes further to include any person acting in an "unofficial capacity" on behalf of a government, department, or agency. The law does not expand on the definition of "unofficial capacity," so, this issue is sure to spawn litigation in the years to come.

## New Law Casts a Bigger Net

The new law also expressly applies to any "senior foreign political figure." This is a major expansion over the FCPA. The FEPA uses a definition from financial criminal regulations stating that a senior foreign political figure is any individual who is:

- A current or former:
  - Senior official in the executive, legislative administrative, military, or judicial branches of a foreign government (whether elected or not);
  - Senior official of a major foreign political party; or
  - Senior executive of a foreign government-owned commercial enterprise;

- A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;
- An immediate family member of any such individual; or
- A person who is widely and publicly known to be a close associate of such individual.

The law expressly states that violations are subject to extraterritorial federal jurisdiction, which should make it easier to enforce internationally. Notably, the DOJ is required to file an annual report with Congress addressing demands for bribes, the major enforcement actions taken, and penalties issued under the law.

## Updates to Policies and Training Material May Be Warranted

In light of the new law, U.S. companies should consider taking these steps now:

- Incorporate the new anti-bribery provisions in your compliance training for employees who conduct international transactions,
- Develop systems and controls to identify all foreign individuals involved in global transactions to confirm if any would be deemed public officials (including "unofficial officials") as well as "senior foreign political figures," and
- Train employees to immediately report to your compliance or legal department any requests or other actions that could constitute a bribe.

## Conclusion

The DOJ is clearly casting a bigger net in its efforts to eliminate corruption. That means that companies should be vigilant with their compliance strategies.

## Note

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