

Corrupt Foreign Leaders Now on the Hook for Bribery Charges: Congress Passes the Foreign Extortion Prevention Act

Article By:

Michael J. Gilbert

A. Joseph Jay, III

Charles L. Kreindler

Jennifer N. Le

On December 14, 2023, with bipartisan support, Congress passed the Foreign Extortion Prevention Act (“FEPA”), making it a federal crime for any foreign government official to demand, receive, or agree to receive a bribe from a U.S. company or individual, or any person while in United States territory in exchange or in connection with obtaining or retaining business. The legislation is part of the National Defense Authorization Act, and is anticipated to be signed into law by President Biden. Considered by the law’s authors to be one of “the most sweeping and consequential foreign bribery laws in nearly half a century,” FEPA has “the potential to help root out foreign corruption at its source.”^[1]

FEPA fills a glaring gap in the Foreign Corrupt Practices Act (the “FCPA”), which criminalizes the “supply side” (bribe payers) rather than the “demand side” (governmental bribe solicitors and receivers) in foreign bribery cases. The FCPA applies only to

individuals and companies who pay or agree to pay bribes to foreign officials in exchange for business. The FCPA does not outlaw the receipt of bribes by the foreign officials. As a result, U.S. enforcement authorities cannot use the FCPA to prosecute foreign officials involved in bribery schemes. Often, the U.S. Department of Justice (the “DOJ”) must resort to other applicable laws, such as the federal anti-money laundering statute, to charge these foreign officials.

For instance, in the 2021 indictment of Mahamoud Adam Bechir (“Bechir”), a former Republic of Chad ambassador to the U.S. and now a fugitive, the DOJ prosecuted a blatant case of foreign bribery where evidence indicated that Bechir was soliciting and accepting over \$2 million in bribes from a Canadian start-up energy company while in the U.S. and conspired to use the U.S. financial system to launder the bribes to conceal the illegal conduct. Despite acknowledging and publicizing the case as one of foreign bribery and corruption, the DOJ could not charge Bechir under the FCPA. Instead, the DOJ charged him with money laundering.^[2]

Once enacted, FEPA will expressly target foreign officials like Bechir and thereby expand the U.S. enforcement authorities’ ability to directly pursue criminal investigations and actions against these individuals under a specific anti-bribery provision like the FCPA. With FEPA, U.S. enforcement authorities will be armed to fight against corruption and bribery on both sides of the corrupt bargain. FEPA also sends a message that the U.S. is dedicated to protecting its citizens and companies from the dangers of foreign bribe demands.

Mechanics and Operations of FEPA

FEPA borrows key features from the FCPA and is meant to work in

tandem with the FCPA. FEPA uses the same terminology as the FCPA: under FEPA a foreign official cannot accept or agree to accept a bribe from a U.S. “issuer” (*i.e.*, a company with securities or a foreign company with American Depositary Receipts listed on the U.S. national securities exchange), “domestic concern” (*i.e.*, a citizen, resident, national, or any business entity with its principal place of business in the U.S.), or any person within U.S. territory. Additionally, like the FCPA, the bribe at issue must be part of the purpose of securing a business advantage.

Despite the similarities between the laws, FEPA does not amend the FCPA. Instead, FEPA amends the U.S. domestic foreign bribery statute, 18 U.S.C. § 201, by adding the term “foreign officials” to the categories of people that cannot be involved in a bribery scheme. FEPA uses mainly the same broad definition for “foreign officials” as the FCPA, but FEPA also expands it to include: (1) persons acting in “unofficial capacity for or on behalf of” a government, department, agency, instrumentality or public international organization; and (2) the term “senior foreign political figure” from the federal anti-money laundering statute. FEPA’s definition of “foreign officials” does not include candidates for foreign political office like the FCPA does. Nonetheless, because FEPA includes the expansive “senior foreign political figure” term, its prohibition also covers senior officials of major foreign political parties (and their immediate family members and close associates).

Foreign officials in violation of FEPA could face a criminal penalty of up to \$250,000 or three times the value of the bribe, imprisonment for up to 15 years, or both.

Conclusion

By enacting FEPA into law, the Biden Administration will make good on its promise laid out in its 2021 Strategy on Countering Corruption to “hold corrupt actors accountable at home and abroad” by targeting foreign public officials soliciting and receiving bribes. FEPA now equips the DOJ with a new targeted legal tool to criminally prosecute corrupt foreign officials, who often escape prosecution in their home countries.

Still, the frequency of FEPA’s use by the DOJ and its effectiveness in prosecuting foreign officials remain uncertain. The U.S. enforcement authorities will likely fare better in utilizing FEPA to prosecute foreign officials from countries with similar anti-corruption policies and regulations. Otherwise, prosecution under FEPA may face jurisdictional hurdles with foreign officials outside of the U.S. authorities’ reach and/or in countries that refuse to extradite their own citizens for prosecution. Moreover, similar diplomatic concerns raised as a reason against application of the FCPA to foreign officials persist with FEPA: Whether the DOJ can effectively pursue powerful foreign officials under FEPA, and the potential global and political ramifications of such actions, remain open questions.

FOOTNOTES

[1] Remarks by Scott Greytak, Director of Advocacy for Transparency International U.S., the organization that helped authored FEPA.

[2] [Press Release, Department of Justice, Charges Unsealed Against Former Chadian Diplomats to the U.S. Charged in Connection with International Bribery and Money Laundering Scheme \(May 24, 2021\)](#)

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