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Foreign Extortion Prevention Act

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Implications of US Passage of the Foreign Extortion Prevention Act

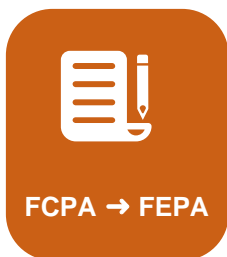
The United States Congress passed the Foreign Extortion Prevention Act (FEPA) as an integral part of the National Defense Authorization Act for Fiscal Year 2024 (NDAA) on 14 December 2023. President Biden signed the NDAA into law on 22 December 2023.

FEPA imposes extraterritorial criminal liability on foreign officials who solicit and/or accept improper financial gain, either for their own benefit or that of a third party – either from

-  **US** nationals
-  **US** legal persons
-  any other person currently present within the **US borders** at the time of any such activity

FEPA is a long overdue addition to the U.S. Foreign Corrupt Practices Act (**FCPA**) mechanism.

Key changes under FEPA



Previous international anti-corruption laws, such as the widely used **FCPA**, focused on sanctioning companies and individuals who make payments to foreign officials without explicitly criminalizing the acts of solicitation or receipt of such payments. In contrast, the recently enacted **FEPA** directly authorizes the Department of Justice (**DOJ**) to target foreign officials in this regard.



FEPA makes it a crime for foreign officials to corruptly **demand, seek, receive, accept, or agree to accept**, directly or indirectly, anything of **value** from any person while in the United States, or from any US issuer or domestic concern, in **exchange for taking or declining to take** any action or providing any improper **benefit**. Furthermore, unlike FCPA, FEPA also criminalizes payments made “for any other person or non-governmental entity” at the direction of a foreign official



By comparison with the FCPA, under FEPA, the notion of “**foreign officials**” has been defined more broadly to include not only those acting in the “**official capacity**” of a foreign government, department, agency, instrumentality, or public international organization but also those acting in an “**unofficial capacity**”.



Such persons can be **fined** up to USD 250,000 or three times the value of the given bribe. They can also be **imprisoned** for up to 15 years, or both. FEPA also requires that the US Attorney General publish annual reports, which outline, among others, the major enforcement actions and penalties imposed by the DOJ. Hence, the question of reputation for any such officials gains additional importance.

Significance of Changes Introduced by FEPA for Foreign Individuals/Entities



The implementation of FEPA, which expands the DOJ's authority to pursue corrupt foreign officials, underscores the importance of robust corporate compliance initiatives. These initiatives not only aid in pre-emptively identifying misconduct but also function as a "shield" for companies to avoid or, at the very least, reduce criminal liability.



Thus, companies and businesses – whether wholly or partially owned by foreign officials – will need to assess any increased risks resulting from FEPA enactment. This includes a thorough review of their respective anti-corruption compliance programs, as FEPA could consider any employees to be "foreign officials," making them subject to prosecution under FEPA.



Every company (whether governmental or not) is required to ensure the adoption of anti-corruption policies and procedures that expressly prohibit both the giving and receiving of bribes, taking into account FEPA rules.



Any person who qualifies as a "foreign official," whether ex officio or ipso facto, remains at risk of criminal liability under FEPA, regardless of whether the improper benefits in question are sought for their own benefit, for the benefit of relatives/family members, or for the benefit of an unrelated third party.



Non-governmental organizations (NGOs) are specifically identified as instrumentalities in any such potential criminal activities. Accordingly, their staff are subject to FEPA criminal liability whether or not such staff qualify as "foreign officials".

This targeted focus on NGOs underscores the legislative intent to hold these organizations accountable for any involvement in corrupt practices that fall within FEPA jurisdiction. FEPA extends legal responsibility to individuals within NGOs, placing them at risk of prosecution regardless of official designation. As a result, NGO leaders and employees must take extra care to ensure compliance with FEPA anti-corruption measures, recognizing the potential legal consequences of their actions and the reputations of the organizations they represent. The inclusion of NGOs within FEPA signifies a comprehensive approach to anti-corruption efforts, emphasizing the concepts of ethical conduct and accountability across all sectors.



Contact us

Kinstellar offers strong home jurisdiction experience in terms of helping to devise efficient anti-corruption compliance programs, and also with assisting in responding to DOJ investigations (including dealing with local prosecutors and criminal law judges on the specific aspects of such cases). Kinstellar remains at your disposal should you have questions regarding the above. In case of inquiries, please liaise with the designated contact person from your home jurisdiction for further information/support:



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