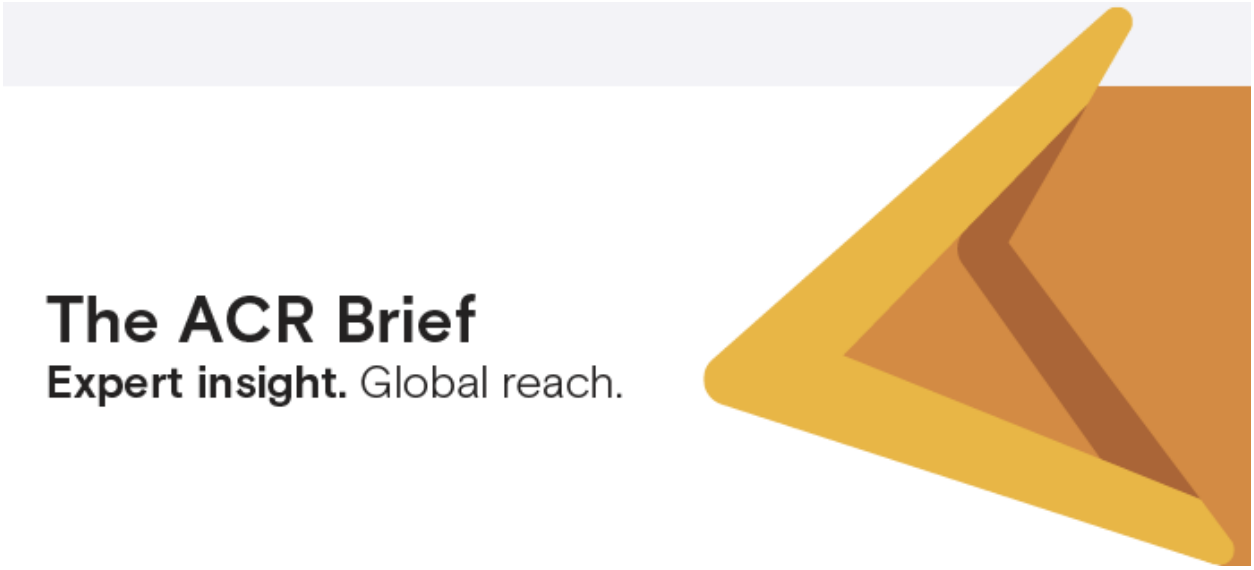

Pushing the Limits of the FCPA

Unlike other anti-corruption laws being enacted and increasingly enforced around the world, the FCPA only applies to bribe offerors who bribe foreign officials, but there are efforts underway to change those limits.

On August 2, 2019, four U.S. Congresspeople introduced the Foreign Extortion Protection Act (FEPA), a law developed with the support of the U.S. Helsinki Commission that would enable the DOJ to indict foreign officials for demanding bribes to fulfill, neglect or violate their official duties, in line with OECD guidelines. The law amends 18 U.S.C. § 201, the act regulating the bribery of public officials generally, and not the FCPA. This structure raises some questions such as how to square the different standards of liability between the two statutes – for example, the domestic bribery statute is limited to bribes paid in narrowly defined "official acts" (a limit that the Second Circuit affirmed last week does not apply to the FCPA) and does not address facilitation payments or bona fide expenditures. There are also often jurisdictional issues involved in pursuing foreign officials.

As we have detailed extensively, the U.S. government often uses alternative methods to sweep foreign officials into FCPA actions when it can to capture the demand side of the bribery – such as with anti-money laundering charges or Travel Act charges, as seen in the recent cases implicating Micronesian, Ukrainian and Mozambican officials.

As the de facto and de jure reach of the FCPA evolves, we will continue to bring you our signature deep analysis of these issues.

Rebecca Hughes Parker
Global Editor-in-Chief