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New U.S. Bribery Law Could Put Non-U.S. Officials Under Unwarranted Scrutiny

The increasingly aggressive U.S. Department of Justice has been handed new tools to extend its targeting of non-U.S. individuals in corruption investigations: A new law targets foreign government officials who demand or receive payments from U.S. individuals or entities. This puts non-U.S. politically connected persons at fresh risk of being reported by politically-motivated rivals. We explore proactive steps at-risk individuals should consider.

The U.S. Department of Justice (DOJ) has aggressively extended its targeting of non-U.S. individuals and government officials in corruption investigations. In December 2023, the U.S. adopted legislation making it a crime for a foreign government official to demand or receive payments from U.S. individuals or entities. This new law expands the DOJ's authority, increasing the risks for current and former government officials and their assets.

Prior global anti-corruption statutes, including the globally enforced U.S. Foreign Corrupt Practices Act (FCPA), target companies and individuals offering payments to government officials, but did not make it illegal for a government official to accept such a payment. The new U.S. law, the Foreign Extortion Prevention Act (FEPA), allows the DOJ to target foreign government officials directly.

Current and former politically connected persons in non-U.S. jurisdictions now face fresh risks from aggressive U.S. prosecutors operating outside the borders of the U.S. In addition to these U.S. prosecutors, these risks may be initiated by politically motivated domestic rivals falsely reporting their political rivals to the DOJ in order to subject them to invasive and damaging investigations, threatening their domestic political reputations, assets and freedom of movement through the Interpol system.

At-risk individuals should consider taking several proactive steps, including:

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1. **Collect evidence proactively for global use.** When facing politically motivated allegations, it is important to quickly gather evidence demonstrating that an official's actions were lawful. Ideally, the evidence can be collected and prepared in a manner that would be accepted by the DOJ and other international authorities, allowing politically motivated investigations to be stopped in their tracks and shifted to the real wrongdoers.
2. **Assess asset vulnerabilities against future government attacks.** Individuals at risk of attack by the DOJ or other government authorities should consider a detailed examination of their own asset structures – including those in offshore jurisdictions such as the British Virgin Islands, Cayman Islands and Dubai – and explore lawful and appropriate preparatory measures that can be taken should an investigation be launched.
3. **Develop a factual narrative to protect against attacks from the media spurred on by politically motivated investigations.** Individuals at risk should develop a proactive communications strategy that anticipates future legal actions and serves to discredit the allegations cast against them, with the purpose of mitigating any reputational harm caused and ensuring that the facts are properly reported against the real wrongdoers.

Given the DOJ's new weapons to directly target non-U.S. officials, current and former government officials can quickly find themselves subjected to unwarranted scrutiny by unsavory political rivals attempting to use the DOJ as a political weapon. If, however, this tactic is identified early, the risks to their assets, reputation and liberty can be mitigated through early and proactive action.

About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct.

To preserve the assets, liberty and reputation of UHNWIs with global business interests, our firm:

- Provides offensive and defensive cross-border litigation and crisis management strategies in court and out-of-court;
- Brings together over a dozen former U.S. and UK government lawyers across offshore jurisdictions in the BVI and Cayman Islands, Asia, EMEA, Latin America and the U.S., including former prosecutors from the U.S. Department of Justice (DOJ) and UK Serious Fraud Office (SFO);
- Takes a multidimensional approach to UHNWI-focused disputes investigations to resolve business disputes and regulatory investigations, trace and recover misappropriated funds, defend against asset attacks, and acquire and strategically deploy information to provide UHNWIs with a commercial advantage in their disputes and investigations.