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India Supreme Court Rules that Private Bankers Operating in India Are “Public Servants,” Significantly Expanding Anti-Corruption Risks

The Supreme Court of India recently issued a landmark ruling that may significantly expand the risk companies face under the U.S. Foreign Corrupt Practices Act (“FCPA”) and similar anti-bribery statutes across the world. On February 23, 2016, the Supreme Court held that employees of all banking companies, foreign and domestic, are “public servants” under India’s Prevention of Corruption Act, 1988 (“POCA”).¹ This definitional expansion could have far-reaching implications for companies interacting with India’s financial sector, who may now face risk of prosecution under both the FCPA and the POCA for issues of corruption involving private banks.

The decision stems from a fraud case against Global Trust Bank (“GTB”), a private sector bank that was central to the 2001 Indian stock market manipulation scam. The government sought to hold two GTB executives liable as public servants under the POCA. Lower courts dismissed the charges, reasoning that the POCA applies only to public employees. The India Supreme Court reversed and held that private bank employees fall within the POCA’s definition of public servant because the legislation was enacted to broaden the purview of the country’s anti-corruption laws.

For companies doing business in India’s financial sector, the ruling could signal increased compliance risk in at least two respects. First, the Court’s broad definition of public servant may extend to employees of both domestic and foreign private banks, which are allowed to operate in India under a license issued by the Reserve Bank of India (“RBI”). In expanding the definition of public servant to enforce the POCA, the Court’s decision may apply to any employee of an RBI-licensed bank, including employees of foreign banks.

Second, by labeling the GTB executives public servants for purposes of the POCA, the Court also may open the door to private bankers in India being deemed foreign officials under the FCPA. The FCPA defines a foreign official as “any person acting in an official capacity for or on behalf of any [foreign] government, department, agency, or instrumentality.”² U.S. regulators have taken an expansive view of who qualifies as a foreign official under the FCPA, and, as a result, prosecuted an increasingly wider range of entities and individuals. Now, U.S. prosecutors may use the India Supreme Court’s recent ruling to bring similar charges against companies and individuals in the U.S. and abroad for improper dealings with private bank employees operating in India.

For more information on this, please contact your usual Ropes & Gray advisor.

¹ *Central Bureau of Investigation v. Gelli*, India Supreme Court (Feb. 23, 2016), available [here](#).

² 15 U.S.C.A. § 78dd-1.