



ALERT TO BUSINESSES ON VIOLATIONS OF THE FOREIGN CORRUPT PRACTICES ACT

The Attorney General issues this alert to remind businesses operating in California that it is illegal to make payments to foreign-government officials to obtain or retain business. Despite the federal administration's February 10, 2025 executive order purporting to pause enforcement of the Foreign Corrupt Practices Act (FCPA), the FCPA remains binding federal law and violations are actionable under California's Unfair Competition Law (UCL).

The FCPA is an important anti-bribery statute that prohibits offering or paying anything of value to a foreign-government official, foreign political party or politician, or official of a public international organization in order to attempt to obtain or retain business. (15 U.S.C. § 78dd-1, *et seq.*) It applies to all U.S. businesses and citizens worldwide, regardless of where the prohibited conduct takes place, as well as to all businesses and individuals who engage in or facilitate prohibited conduct while in the United States. The FCPA also requires publicly held U.S. companies to maintain books and records that accurately reflect the disposition of company assets and to maintain a system of internal accounting controls to ensure that transactions are authorized and accurately accounted for. At the federal level, the FCPA may be prosecuted by the U.S. Department of Justice and by the Securities and Exchange Commission. There is a five-year statute of limitations for violations of the FCPA's anti-bribery provisions and a six-year statute of limitations for its accounting provisions, which can be extended. (18 U.S.C. §§ 3282, 3292, 3301.)

The FCPA was passed in 1977 to restore public confidence in American businesses after a series of bribery scandals came to light, with over 400 U.S. companies admitting making "questionable or illegal payments" to foreign-government officials, politicians, and political parties. (H.R. Rep. No. 95-640, at 4.) As stated by the Committee on Interstate and Foreign Commerce, the payment of bribes to influence foreign officials is not only unethical but also bad business: among other things, its "erodes public confidence in the integrity of the free market system," "rewards corruption instead of efficiency and puts ethical enterprises to lower their standards or risk losing business," and "creates severe foreign policy problems for the United States." (*Id.* at 4-5.) The FCPA also serves to help U.S. businesses resist bribery and other corrupt demands: by citing to the FCPA's prohibition, businesses are "in a better position to resist those pressures and refuse those requests." (*Id.* at 5.)

The Attorney General emphasizes the need for all businesses and individuals to continue complying with all applicable laws, including the FCPA, regardless of the federal administration's pronouncements. Violations of the FCPA are actionable under California's UCL. The UCL, which was enacted to preserve fair business competition and protect consumers, prohibits unlawful, unfair, and fraudulent business acts and practices. (Bus. & Prof. Code, § 17200 *et seq.*) The UCL "borrows violations of other laws and treats them as unlawful practices that the statute makes independently actionable." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) Violations of federal laws and of criminal laws may serve as the predicate for a UCL cause of action. (E.g., *Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 394 [federal law]; *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 559-560 [criminal law], abrogated by statute on other grounds.) The Attorney



General may bring enforcement actions against businesses and individuals for violations of the UCL, including actions predicated on FCPA violations. (See *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144 [noting Court of Appeals' decision that UCL claim may be predicated on FCPA violation]. In addition to civil penalties, restitution, and injunctive relief, the Attorney General may obtain disgorgement as a remedy for UCL violations. (Gov. Code, § 12527.6.) Violations of the FCPA may also constitute unfair, deceptive, or abusive acts or practices under other states' laws, or give rise to liability under state or federal tax or securities laws. Accordingly, businesses should continue to maintain rigorous internal accounting controls and to ensure that they and their agents do not offer or pay anything of value to foreign officials to obtain or retain business.

