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A Global Anti-Corruption Newsletter

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California Attorney General Signals Anti-Corruption Enforcement at the State Level

On April 2, 2025, California Attorney General Rob Bonta warned businesses operating in California that "bribing foreign officials is illegal under California law and will not be tolerated."[1] More specifically, AG Bonta underscored that violations of the FCPA, including improper payments to foreign officials, "are actionable under California's Unfair Competition Law" ("UCL").[2]

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1. California Dep't. of Justice, Office of the Attorney General, Press Release, "Attorney General Bonta Alerts Businesses: It Remains Illegal to Bribe Foreign-Government Officials" (Apr. 2, 2025), https://oag.ca.gov/news/press-releases/attorney-general-bonta-alerts-businesses-it-remains-illegal-bribe-foreign.
2. California Dep't. of Justice, Office of the Attorney General, Legal Advisory, "Alert to Businesses on Violations of the Foreign Corrupt Practices Act" (Apr. 2, 2025), https://oag.ca.gov/system/files/attachments/press-docs/FCPA%20Legal%20Alert.pdf; *see* Cal. Bus. & Prof. Code §§ 17200 to 17210.

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These statements follow President Donald Trump's executive order temporarily pausing DOJ's enforcement of the Foreign Corrupt Practices Act – which, Bonta emphasized, "remains binding federal law."[3] The executive order directed the U.S. Attorney General to formulate new policies and guidelines governing such investigations and enforcement.

Since the order's issuance, one persistent question has been whether other enforcement authorities within or outside the United States will fill any void created by DOJ's pause. AG Bonta's recent announcement suggests that at least California intends to do so, and others may follow. For example, on March 20, 2025, the enforcement authorities from France, Switzerland, and the United Kingdom announced the formation of an International Anti-Corruption Prosecutorial Taskforce.[4]

Enforcement of California's UCL

California's UCL is a civil rather than criminal law, and it broadly prohibits "any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." As the California Supreme Court stated in a 1999 decision, "[b]y proscribing 'any unlawful' business practice, 'section 17200 'borrows' violations of other laws and treats them as unlawful practices' that the unfair competition law makes independently actionable."[5] The UCL details "three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent."[6] Notably, California's Court of Appeal determined in 2001 that a violation of a federal criminal law, such as the FCPA (in particular), may serve as a predicate offense for a UCL cause of action.[7]

The UCL often has been used to combat antitrust violations, false advertising, and consumer fraud. In recent years, California has been even more aggressive in using the UCL to hold companies accountable for perceived unfair business practices. For example, in October 2023, Bonta and 33 attorneys general sued Meta Platforms Inc.,

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3. Executive Order, "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security" (Feb. 10, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/pausingforeign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security; *see* Andrew M. Levine, David A. O'Neil, Winston M. Paes, Jane Shvets, Douglas S. Zolkind, Erich O. Grosz, and Philip Rohlik, "Trump Administration Pauses FCPA Enforcement," FCPA Update, Vol. 16, No. 7 (Feb. 2025), https://www.debevoise.com/insights/publications/2025/02/fcpa-update-february-2025.
4. International Anti-Corruption Prosecutorial Taskforce, "Founding Statement" (Mar. 20, 2025), https://assets.publishing.service.gov.uk/media/67dc0bb3931ea30d1b7ee33d/International_Anti-Corruption_Prosecutorial_Taskforce.pdf.
5. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163,180, 973 P.2d 527, 539 (1999).
6. *Id.*
7. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 63 P.3d 937, 943 (2003) (noting a prior determination by the Court of Appeal).

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alleging that Meta had violated their states' consumer protection laws by knowingly designing and deploying harmful features on Instagram and Facebook that addicted children to their products and contributed to a youth mental health crisis.[8]

The UCL also creates a private right of action for plaintiffs who have "suffered injury in fact" and "lost money or property as a result of" the challenged business act or practice.[9] There are no criminal penalties for violating the statute, though a violation could lead to a criminal referral. Civil remedies under the UCL include steep civil penalties, restitution, injunctive relief, and disgorgement. For example, in 2023, the U.S. Supreme Court let stand a judgment for $302 million in penalties against Johnson & Johnson for failure to inform patients and doctors of pelvic mesh implant product complications.[10]

"Despite the pause in federal enforcement activity under the FCPA, the recent legal alert by the California AG reflects the state's intent to use the [Unfair Competition Law] to penalize corrupt conduct."

Challenges to State Anti-Corruption Enforcement

Although the UCL poses significant risk for companies, prosecutors must overcome substantial jurisdictional and practical challenges to establish violations of the statute. Also, the UCL does not apply extraterritorially: UCL claims require injury in California by in-state conduct or to in-state plaintiffs.[11] As a practical matter, prosecutors in California may encounter difficulty in collecting evidence of foreign bribery from jurisdictions abroad and in devoting adequate resources to conduct effective investigations of corrupt conduct involving foreign government officials.

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8. *People of the State of California v. Meta Platforms Inc.*, 4:23-cv-05448, U.S. District Court, Northern District of California (Oakland); Isaiah Poritz and Rachel Graf, "Meta Can't Escape States' Claims It Hooked Kids on Platforms (4)," Bloomberg Law (Oct. 15, 2024), https://news.bloomberglaw.com/litigation/meta-must-face-some-claims-by-state-ags-in-addiction-lawsuit.
9. Cal. Bus. & Prof. Code § 17204.
10. California Dep't of Justice, Office of the Attorney General, Press Release, "Attorney General Bonta Welcomes Supreme Court Decision Refusing to Review $302 Million Judgment Against Johnson & Johnson Over Pelvic Mesh Products" (Feb. 21, 2023), https://oag.ca.gov/news/press-releases/attorney-general-bonta-welcomes-supreme-court-decision-refusing-review-302.
11. *Norwest Mortg., Inc. v. Superior Ct.*, 72 Cal. App. 4th 214, 222, 85 Cal. Rptr. 2d 18, 23 (1999); *Aghaji v. Bank of Am., N.A.*, 247 Cal. App. 4th 1110, 1119, 202 Cal. Rptr. 3d 619, 627 (2016).

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However, companies doing business in California, including out-of-state companies advertising or selling to consumers in California, can be sued under the statute. Companies should carefully examine potential risks posed by cross-border activity and business operations in California, which has the largest economy in the United States and the fourth largest economy in the world.[12]

Takeaways

Despite the pause in federal enforcement activity under the FCPA, the recent legal alert by the California AG reflects the state's intent to use the UCL to penalize corrupt conduct. Conduct that violates the FCPA, even if not a near-term enforcement priority for the Trump Administration, may serve as a predicate offense for a UCL cause of action.

Additionally, more private plaintiffs may choose to bring suit under the UCL in connection with corrupt conduct. Other state and foreign jurisdictions also may increase enforcement of their own anti-corruption laws and, in doing so, could help to fill any void left by the federal government. However, other state and local jurisdictions, especially ones not as prominent as California, also may face jurisdictional and practical limitations to their ability to prosecute foreign bribery.

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12. California Governor Gavin Newsom, Press Release, "California is now the 4th largest economy in the world" (Apr. 23, 2025), https://www.gov.ca.gov/2025/04/23/california-is-now-the-4th-largest-economy-in-the-world.

UK Supreme Court Opines on Extraterritoriality in Extradition and Money Laundering Context

In its February 2025 decision of *El-Khouri*,[1] the UK Supreme Court delivered an important judgment clarifying and revising the interpretation of the double criminality rule in extradition cases. Just as significantly, the decision restricts the extraterritorial application of UK money laundering offences, thus overturning the expansive position that has prevailed for the past decade and that has informed companies' approach when considering the need to file Suspicious Activity Reports ("SARs") in the United Kingdom.

Background

The judgment concerns an appeal bought by Joseph El-Khouri, a dual UK-Lebanese national living in the United Kingdom, against an extradition request by the U.S. government following charges of insider dealing in relation to companies listed on U.S. stock exchanges. Although almost all of the alleged illegal acts took place in the United Kingdom, the UK Financial Conduct Authority determined that there was insufficient evidence to prosecute Mr. El-Khouri in the United Kingdom.

Mr. El-Khouri contested the extradition request on the grounds that his alleged conduct did not meet the double criminality requirement in the Extradition Act 2003, namely that the conduct must constitute a criminal offence in both the United Kingdom and the country requesting extradition. Both the Magistrates' Court and the High Court found in favour of the U.S. government, but the Supreme Court granted Mr. El-Khouri permission to appeal.

Extradition and Double Criminality Principles

In its judgment, the Supreme Court highlighted that the correct approach to the double criminality rule is to focus on the conduct alleged against the accused in the foreign state and consider whether that conduct would also constitute an offence in the United Kingdom (rather than comparing the elements of the foreign offence to the corresponding UK offence). Section 137 of the Extradition Act provides for two different scenarios:

1. Where the relevant conduct took place inside the requesting country, the test is whether that conduct would constitute an offence under UK law (punishable by at least 12 months' imprisonment) if it had occurred in the United Kingdom.

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1. *El-Khouri v Government of the United States of America* [2025] UKSC 3.

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This involves an "*exercise of transposition*" where the court must consider a hypothetical situation in which the relevant acts were committed in the United Kingdom and decide whether those acts would constitute an offence under UK law.

2. Where the relevant conduct took place outside the requesting country, the test is whether the conduct would constitute an extraterritorial offence under UK law (punishable by at least 12 months' imprisonment) if it had occurred outside the United Kingdom. Where the relevant acts were committed in the United Kingdom, this involves transposing them outside the United Kingdom and deciding whether those acts would constitute an extraterritorial offence under UK law.

The Court explained that the double criminality rule protects the accused from the exercise of an exorbitant foreign jurisdiction. The more onerous requirement in the second scenario above provides a safeguard where the requesting state seeks to exercise extraterritorial jurisdiction – in that case, extradition is only possible where the United Kingdom also would exercise extraterritorial jurisdiction in corresponding circumstances.

Notably, the Court held that whether the relevant conduct took place in or outside the requesting country is a question of fact to be answered only by considering where the acts specified in the extradition request are alleged to have been physically done. The analysis must focus on the "*substance of the alleged criminality*" and ignore where any consequences of those acts were felt. This question may be more difficult to answer where some acts took place inside the requesting country and some outside, but the assessment does not depend on the entire substance of the criminality or all of acts occurring in one place or the other. In any event, it was clear in this case that the substance of Mr. El-Khouri's alleged criminality took place in the United Kingdom, even if its effects were felt on U.S. financial markets.

Application to Insider Dealing and Money Laundering Offences

Transposing Mr. El-Khouri's conduct such that it hypothetically took place outside the United Kingdom, the Court found that it would not have constituted criminal insider dealing under section 52 of the Criminal Justice Act 1993. The insider dealing offence has limited extraterritorial application as it requires the relevant acts to have taken place either in the United Kingdom or on UK regulated markets (the latter may involve conduct outside the United Kingdom which impacts UK markets).

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As an alternative, the Court considered whether Mr. El-Khouri's conduct (again, transposed outside the United Kingdom) could constitute a money laundering offence under section 329 of the Proceeds of Crime Act 2002 ("POCA"), which proscribes the acquisition, use or possession of criminal property. The Court found that overseas acts of acquiring, using, or possessing property that represents the proceeds of a crime committed overseas – in this case, the money made from his alleged illegal trading activities – would not constitute an offence under section 329 of POCA. Consequently, the order for Mr. El-Khouri's extradition was quashed.

Significantly, the Court emphasised that section 329 of POCA is only engaged where the acquisition, use, or possession of criminal proceeds takes place in the United Kingdom, since the language of POCA indicates that Parliament did not intend money laundering offences to apply to acts done overseas. It thereby overturned the Court of Appeal's controversial 2014 decision in *Rogers*,[2] which had determined that even if none of the acts of money laundering took place in the United Kingdom, POCA did have broad extra-territorial reach and UK jurisdiction would be engaged where a "*significant part of the criminality underlying the case*" took place in the United Kingdom and overseas authorities would have no interest in prosecuting.

"[T]he decision restricts the extraterritorial application of UK money laundering offences, thus overturning the expansive position that has prevailed for the past decade and that has informed companies' approach when considering the need to file Suspicious Activity Reports … in the United Kingdom."

Analysis

El-Khouri provides an important clarification of the relevant principles when analysing the fact pattern in extradition cases, particularly where the alleged acts occurred outside the country that is requesting extradition. However, the judgment leaves open how more complex cases of cross-border criminal conduct should be assessed, in circumstances where significant parts of the alleged criminal scheme take place both in and outside the requesting country.

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2. *R v Rogers* [2014] EWCA Crim 1680.

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Importantly, *El-Khouri* provides clarity for companies encountering suspected international money laundering schemes and the attendant considerations regarding the potential need to file SARs. The Supreme Court's decision to overrule *Rogers* returns the law to its previous position regarding the limited extraterritorial effect of POCA – that is, a UK money laundering offence is committed where the accused: (1) acts within the United Kingdom to deal with the proceeds of a crime committed overseas; or (2) acts within the United Kingdom to deal with criminal property located overseas. Overseas acts of money laundering (such as concealing, converting, transferring, acquiring, using or possessing criminal property) do not come within UK jurisdiction under POCA ss327-329. *Rogers* could be distinguished on the basis of some unusual facts (specifically, overseas money laundering acts that were part of an overall scheme to defraud persons in the United Kingdom) which limited its broader application. Notwithstanding this, it established an expansive principle of extraterritorial application for UK money laundering offences which necessarily informed companies' approach – including companies not in the regulated sector – when determining the need to file SARs with the UK's National Crime Agency ("NCA") and thus seek protection from potential criminal liability by requesting a defence against money laundering ("DAML").

The well-trodden topic of SARs has been in the news once again in the United Kingdom, with the UK Financial Intelligence Unit within the NCA recently publishing its annual report on SAR activities for the year ended March 2024.[3] Highlights include the fact that the total number of submitted SARs increased slightly to 872,000 and, despite organisations requesting significantly fewer DAMLs, there was a substantial increase in DAMLs being refused (from 1,995 to 2,881), enabling the NCA to investigate the circumstances giving rise to the SAR and subsequently use enforcement powers such as account freezing orders. As a whole, the report indicates that the NCA is improving its targeting and scrutiny of the huge volume of SARs it receives and then more actively investigating and (where appropriate) taking action in cases that it is interested in pursuing.

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3. *See* UK Financial Intelligence Unit, "SARs Annual Report 2024," https://www.nationalcrimeagency.gov.uk/who-we-are/publications/747-sars-annual-report-2024/file.

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