

COMPLEX POLITICAL CONTRIBUTION RULES POSE LEGAL AND REPUTATIONAL RISKS

Many U.S. businesses have decided that it is in their interest to be involved in the electoral process, either through the operation of a corporate political action committee (a “PAC”) or through personal contributions by corporate officers and board members. The Federal Election Campaign Act, the regulations of the Federal Election Commission (the “FEC”) and state laws governing campaign finance are highly technical and complex. Some FEC regulations are enforced on the basis of strict liability so that even “honest” mistakes in handling, accounting for, or reporting receipts or expenditures--such as software problems or lack of identifying information on a contributor--can result in an enforcement action and fines. State laws differ widely with respect to limits on who may contribute, limits on the amount of a contribution, and reporting requirements, and pose additional compliance challenges.

Failure to comply with applicable federal or state laws may expose businesses and individuals to civil and/or criminal enforcement action or liability. In addition, because the FEC and many states require that enforcement actions be made public, noncompliance with applicable laws could harm a business’s reputation and credibility or result in unwelcome media attention.

As the country begins a new election cycle leading to the 2008 presidential and congressional elections as well as hundreds of state and local political contests, businesses and executives will be asked to make contributions to a variety of candidates and causes, participate in a PAC, hold fund-raising events, or raise money by contacting friends and associates. Each of these activities is governed by separate restrictions and requirements.

In light of the complex web of regulations affecting campaign contributions, some businesses regularly undertake “audits” of their campaign finance activities, including comprehensive review of current practices, evaluation of the desirability of establishing a PAC, and development of written compliance policies for company executives and employees. Whatever approach a business takes, it is important to examine practices with respect to political contributions regularly to ensure that such practices comply with applicable laws.

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We regularly advise businesses, trade associations, and individuals on compliance with federal and state campaign finance laws, review their practices, and help them develop compliance plans. If you have questions on these issues, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), or the attorney with whom you regularly work.

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