DOJ FCPA Review Procedure Releases and Opinion Procedure Release Summaries

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1980-01
October 29, 1980

Background: A U.S. law firm proposed to establish a fund of approximately $10,000 per year for the education and support of an honorary government official's two adopted children. The official was elderly, and his duties were only ceremonial and did not involve substantive decision-making responsibilities. The children's natural parents were employees of the foreign government but were not in a position to influence official decisions.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances. There was no suggestion that preferential treatment would be given to the law firm, no business had been or was expected to be obtained or retained, and neither the adoptive parent nor natural parents were in a position to influence official decisions.

Full Text of Release

1980-02
October 29, 1980

Background: Castle & Cooke, Inc., and two of its subsidiaries sought permission for an employee of one subsidiary to run for public office in a foreign country (and serve if elected) while retaining his private employment.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the employee's duties with the subsidiary did not include any advocacy or representation before the government on the corporation's behalf;
(2) it was common, and consistent with the foreign country's laws, for such part-time legislators to hold outside employment;
(3) the employee agreed to transparency and conflict of interest avoidance requirements; and
(4) the employee's salary would be directly correlated to the amount of time he actually worked for the corporation.

Full Text of Release

1980-03
October 29, 1980

Background: Requestor, a domestic concern, proposed to enter into a legal contract with an attorney domiciled and functioning in West Africa. The proposed contract:

(1) stated that the attorney represented he was not presently a foreign official and would not become one during the course of the agreement; and

(2) explicitly forbade payments to foreign officials.

Decision: DOJ explained that Requestor did not present any facts or circumstances that could reasonably cause concern about the application or possible violation of the FCPA. DOJ did note that if there were a reasonable concern, a mere contract provision, without other affirmative, precautionary steps, would not be sufficient.

Full Text of Release

1980-04
October 29, 1980

Background: Joint Requestors, Olayan Group (a Saudi Arabian entity) and Lockheed Corporation, sought to enter into agreements with each other for the purpose of engaging in potential business transactions with the government of the Kingdom of Saudi Arabia and with the Saudi Arabian Airlines Corporation ("Saudia"). Mr. Sulliman S. Olayan, the Chairman of the Olayan Group, was also an outside director of Saudia.

Decision: DOJ explained that it did not intend to take enforcement action premised on Mr. Olayan's directorship of Saudia based on the disclosed facts and circumstances, including that:

(1) Mr. Olayan's position on the Saudia board was one reserved by law for persons that were not civil servants;
(2) the contemporaneous positions did not violate the laws of the Kingdom of Saudi Arabia;
(3) transparency and conflict of interest avoidance requirements were in place; and
(4) his position as a Saudia director was Mr. Olayan's only position in the government of Saudi Arabia.

Full Text of Release

1981-01
November 25, 1981

Background: Joint Requestors, Bechtel Group, Inc. ("Bechtel"), a privately owned engineering, construction, and project management firm, and SGV Group ("SGV"), a multinational organization that provided auditing, management consulting, and tax advisory services headquartered in the Republic of the Philippines, proposed entering into a contractual relationship where SGV would provide various services for Bechtel.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including:

(1) the due diligence Bechtel had conducted on SGV;
(2) contractual obligations on FCPA adherence;
(3) the additional controls put in place to prevent FCPA violations; and
(4) that the relationship complied with local law.

Full Text of Release

1981-02
December 11, 1981

Background: Requestor, Iowa Beef Packers, Inc. ("IBP"), proposed furnishing samples of its packaged beef products, the total value of which was less than $2,000, to officials of the Soviet Ministry of Foreign Trade ("MVT"), the Soviet government agency responsible for procurement of such products.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the samples were not intended for individual use by MVT officials but rather for MVT officials' inspection, testing, and sampling; and
(2) the Soviet government had been notified that IBP intended to supply sample products to the MVT officials.

Full Text of Release

1982-01
January 27, 1982

Background: Requestor, the Department of Agriculture of the State of Missouri (the "Department"), proposed hosting ten representatives of Mexican government agencies and instrumentalities in a series of meetings to promote agricultural business in Missouri. The Department expected to pay reasonable and necessary expenses of the Mexican delegation, including lodging, meals, entertainment, travel within the State of Missouri, and other expenses paid directly by the Mexican delegation if adequate receipts were furnished. Private businesses were expected to fund part of the costs, as well as furnish the delegates with samples of their products.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, which demonstrated that the expenses were reasonable, necessary, and in connection with a legitimate business purpose.

Full Text of Release

1982-02
February 18, 1982

Background: Joint Requestors, Ransom F. Shoup & Company ("Shoup"), a closely held Pennsylvania corporation in the business of selling, repairing, and designing voting machines, and Mr. Frederick I. Ogirri ("Mr. Ogirri"), a temporary employee of the Consulate of Nigeria in the United States, sought to enter into a contract to pay Mr. Orgirri a 1% finder's fee for assisting Shoup to obtain a contract with the Federal Election Commission of Nigeria ("the Commission").

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) Mr. Ogirri's government position was purely clerical and he had no (and used no) influence with the Nigerian government;
(2) Mr. Ogirri had no business or personal relationship with the Commission;
(3) the agreement would be disclosed to the Commission;
(4) legal opinions were obtained that Mr. Ogirri's relationship with Shoup did not violate Nigerian laws; and
(5) Mr. Ogirri's contract contained anti-bribery compliance provisions.

Full Text of Release

1982-03
April 22, 1982

Background: Requestor, a Delaware corporation, sought to do business with the department of the Federal Socialist Republic of Yugoslavia responsible for the procurement of property and services for the Yugoslav military. Specifically, the corporation proposed to retain and compensate a sub-unit of the department to act as an agent and to carry out the duties and responsibilities of a commercial sales agent. This agency agreement would require the corporation to pay the sub-unit a percentage of the total contract price and a percentage of future contracts with the procurement department. A senior official of the sub-unit advised that Yugoslav law required such an agreement if a firm intended to do business with the Yugoslav military.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) no individual government official was expected to profit personally from the agency relationship; and
(2) certain transparency provisions were to be required for both the agency contract with the sub-unit and any purchase contract with the department.

Full Text of Release

1982-04
November 11, 1982

Background: Requestor, Thompson & Green Machinery ("T&G"), intended to pay a foreign businessman who served as a consultant in connection with a generator sale to a foreign government, where the businessman's brother was an employee of that government.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the written agreement between T&G and the consultant incorporated the FCPA's prohibitions and precluded the consultant from using his commissions to pay a finder's fee or commission to a third party; and
(2) both the consultant and his brother signed separate affidavits in which they vowed adherence to the anti-bribery provisions of the FCPA.

Full Text of Release

1983-01
May 12, 1983

Background: Requestor, a California corporation, sought to do business with a Sudanese corporation, whose head was selected by the President of Sudan, but which functioned independently of the Sudanese government. Under the proposed agency agreement, the California corporation would pay the Sudanese corporation a commission based on a percentage of its sales to commercial and governmental customers in Sudan and other countries.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) payment would be made directly to the Sudanese corporation, and not to any individual;
(2) notice would be given of the relationship between the California and Sudanese corporations to customers;
(3) all purchase contracts would reference the agency relationship between the two corporations; and
(4) no government official was expected to benefit personally from the agency relationship.

Full Text of Release

1983-02
July 26, 1983

Background: Requestor, an American company participating in a joint venture with two foreign companies, had a long-term contract with an entity owned and controlled by the government of a foreign country. The joint venture was also in price negotiations with the government entity over the final phase of the contract. The general manager of the government entity and his wife had already booked a vacation to the United States at their own expense. The American company proposed paying for an extension of their trip to take them on a promotional tour of the American company's facilities. The total expenses for the extension (transportation, lodging, meals, and entertainment) would not exceed $5,000.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, which demonstrated that:

(1) the expenses were reasonable and necessary;
(2) the extension was for a legitimate business purpose; and
(3) the expenses would be accurately recorded in the company's books and records.

Full Text of Release

1983-03
July 26, 1983

Background: Joint Requestors, the Department of Agriculture of the State of Missouri and CAPCO, Inc., proposed to pay the reasonable and necessary expenses of a trip, including travel, lodging, meals, and entertainment, by a Singapore government official in order to promote the sale of certain Missouri agricultural products. The foreign official would attend site inspections, demonstrations, and meetings during his ten-day stay.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, which demonstrated that the expenses were reasonable, necessary, and in connection with a legitimate business purpose.

Full Text of Release

1984-01
August 16, 1984

Background: Requestor, a U.S. firm, sought to hire a foreign firm as its marketing representative. The foreign firm's principals were related to the head of state of the foreign country, and one of its principals personally managed some of the head of state's private business affairs and investments.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including:

(1) the due diligence the U.S. firm had conducted on the foreign firm;
(2) contractual anti-bribery compliance provisions; and
(3) additional controls put in place to prevent FCPA violations, including transparency obligations.

Full Text of Release

1984-02
August 20, 1984

Background: Requestor, a U.S. firm, sought to transfer the assets of a foreign branch office to a foreign-owned company and become a minority stock owner in the foreign-owned company. The transaction would require regulatory approval. Because of a remark by an agent of the foreign company about making a small payment to low-level government employees to facilitate the transaction, the firm sought an opinion concerning the transaction.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) at the time of the alleged offer, the firm's employees discouraged the payment;
(2) no payments were in fact made to any government official;
(3) all parties pledged to not violate the FCPA;
(4) the firm retained the rights to audit the books and records of the foreign company and to separate from the foreign company if it became aware of any FCPA violations; and

(5) the firm agreed to report any violations to DOJ.

Full Text of Release

1985-01
July 16, 1985

Background: The subsidiary of Requestor, Atlantic Richfield Co. ("ARCO"), planned to build a chemical plant in France. Requestor proposed to invite officials of the French government ministry responsible for the issuance of permits and licenses for the project to the United States to meet with company officials and inspect an ARCO plant. ARCO intended to pay the reasonable and necessary expenses of the French delegation, including air travel, lodging, and meals.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the meetings and inspection were to address French authorities' concerns relating to the operation of a large-scale chemical plant;
(2) the French government was to select the official or officials; and
(3) ARCO obtained an opinion that the proposal was consistent with French law.

Full Text of Release

1985-02	The release was a press release concerning the *W.S. Kirkpatrick* case.

1985-03
January 20, 1987

Background: Requestor, a U.S. business entity (the "company"), sought to negotiate a settlement of a claim against a foreign country but had been unable to identify the appropriate agencies or officials with which to do so. The company proposed to retain a former government official of the country to act as its agent to identify the agencies and officials responsible for negotiating settlement of the claim and assist in the possible settling of the claim.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that the proposed agency agreement specified that the agent:

(1) was not presently a foreign official;
(2) understood the prohibitions of the FCPA and would abide by them;
(3) would only perform the functions specifically authorized by the company; and
(4) would only be compensated at a rate of US $40 per hour, plus expenses, not to exceed $5,000.

Full Text of Release

1986-01
July 18, 1986

Background: Requestors, three U.S. corporations, proposed to employ members of the British and Malaysian parliaments ("MPs") to represent the corporations in business operations in the MPs' respective countries. The corporations intended to compensate the MPs through salaries and/or commissions.

Decision: DOJ explained that it did not intend to take enforcement action in this particular situation based on the specific facts and circumstances disclosed, including that:

(1) the contracts and parties had strict anti-bribery controls;
(2) the compensation was reasonable and would be paid directly to the MP;
(3) none of the MPs held any other governmental position, none held a special position of influence within his parliament, and each agreed not to use his influence to benefit the respective U.S. company; and
(4) the employment arrangements did not violate any laws of the respective foreign countries.

Full Text of Release

1987-01
December 17, 1987

Background: Requestor, Lantana Boatyard, Inc. ("Lantana"), proposed selling military patrol boats to a foreign corporation with the expectation that the foreign corporation would resell the boats to the Nigerian government. Lantana intended to pay a 10% commission to an international marketing organization for having brought the business opportunity to Lantana's attention.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the marketing organization would sign a written certificate that the commission would not be used for any activity or purpose that would violate the FCPA;
(2) the payment to the marketing organization was consistent with Lantana's prior business practices in paying such fees;
(3) the contract with the foreign corporation contained provisions requiring compliance with the FCPA and certifications that none of the foreign corporation's officers or employees knew of or committed any FCPA violations; and
(4) Lantana represented that it would disclose the terms of its sales contract to the Nigerian government upon request.

Full Text of Release

1988-01
May 12, 1988

Background: Requestor, Mor-Flo Industries, Inc. and two of its subsidiaries (collectively "Mor-Flo"), proposed to acquire property in Mexico, upon which it would build a facility for the production of gas and electric water heaters. In connection with this project, Mor-Flo intended to participate in a Mexican government debt-equity swap program, through which it would acquire deeply-discounted government debt instruments. To participate in the program, Mor-Flo would have to pay non-refundable fees to a Mexican government agency and to the financial institution that was the Mexican government's agent in the U.S. The fees were $42,000 and $320,000, respectively.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) Mor-Flo would secure written confirmation from the U.S. financial institution that the institution was the duly authorized representative of the Mexican government and none of the fees paid would be used for any purpose prohibited by the FCPA; and

(2) Mor-Flo would obtain an opinion from local counsel that the arrangement was consistent with Mexican law.

Full Text of Release

1992-01
February 1992

Background: Requestor, Union Texas Pakistan, Inc. ("Union Texas"), proposed to enter into a joint-venture agreement with Pakistan's Ministry of Petroleum and National Resources. As part of the venture, and as proposed by the Ministry, Union Texas would be required to provide a minimum of $200,000 of industry training per year to Pakistani government personnel, which included paying the reasonable and necessary expenses for such training (e.g., seminar fees, airfare, lodging, meals, and ground transportation).

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that, under its laws, the government of Pakistan was able to require such training.

Full Text of Release

1993-01
April 20, 1993

Background: Requestor, a major U.S. commercial organization (the "organization"), entered into a joint-venture partnership with a state-owned and controlled foreign partner (the "foreign partner") to supply services to another entity that was wholly owned and supervised by the foreign government. As part of the arrangement, the partnership would be required to pay directors' fees of approximately $1,000 per month to its foreign directors, including those who were employees of the foreign partner.

Decision: DOJ explained that because the foreign partner was an instrumentality of the foreign government, its employees who served as foreign directors of the partnership were "foreign officials." Nevertheless, DOJ concluded that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the foreign directors' fees, which approximated their regular salaries from the foreign partner, would be repaid by the foreign partner; and
(2) the organization would educate the foreign directors about the FCPA.

Full Text of Release

1993-02
May 11, 1993

Background: Requestor, an American company, sought to enter into a sales agreement with a foreign state-owned enterprise (the "SOE"), which held a license giving it the exclusive right to supply all defense equipment for the country's military. In this country, in order to do business with the military, all foreign suppliers were required to go through the SOE via a written agreement that obligated the supplier to pay the SOE a percentage of the total contract relating to the sale of defense equipment. The company, however, had decided instead either to make the commission payments directly to the foreign government's treasury or to have the SOE's commissions deducted from the purchase price and withheld by the government customer.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances.

Full Text of Release

1994-01
May 13, 1994

Background: Requestors, an American company, its wholly owned subsidiary, and a foreign citizen, requested an opinion concerning the subsidiary's intention to enter into a contract with a foreign national, who served as the general director of a foreign, state-owned enterprise (the "SOE"). The subsidiary had previously purchased land from the SOE and constructed a manufacturing plant. The subsidiary wished to increase its plant's electrical capacity by constructing a power substation, which would require a service agreement with the local power authority, minor road construction and fencing, and certain consents and government approvals. As a consequence, the subsidiary wished the assistance of someone who was familiar with the location and existing equipment, as well as the proper forms and procedures to prepare the necessary submissions and obtain the necessary consents and approvals. The general director possessed these qualifications.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the general director was hired solely in his personal capacity;
(2) the general director made several representations designed to ensure (a) anti-corruption compliance, (b) conflict of interest avoidance, and (c) transparency; and
(3) the consultancy was lawful under the foreign country's laws and regulations.

Full Text of Release

1995-01
January 11, 1995

Background: Requestor, a U.S.-based energy company, sought to acquire and operate a plant in a South Asian country. If the acquisition were successful, the company would donate $10 million to help fund a nearby, public medical complex under construction, which the company's employees and affiliates would be able to use. The donation was to be made through a charitable organization incorporated in the United States and through a public limited liability company (the "LLC") located in the South Asian country.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the company would require certifications from all officers of the charitable organization and the LLC that none of the funds would be used in violation of the FCPA;
(2) none of the persons employed by or acting on behalf of the charitable organization or the LLC were affiliated with the foreign government; and
(3) the company would require audited financial reports accurately detailing the disposition of the donated funds.

Full Text of Release

1995-02
September 14, 1995

Background: Joint Requestors, two U.S. companies ("Company A" and "Company B"), sought to engage in certain business dealings in a foreign country. Specifically, Company A owed offset obligations to the foreign country. Company B wished to create a new company ("Newco") in the foreign country with the majority of investors being foreign officials ("investor officials"). Company A would pay Company B for a certain amount of the offset credits generated from the development of Newco, which would allow Company A to fulfill its offset obligations to the foreign country. Company A would not be an investor in Newco but would receive fees pursuant to a management services contract with Newco and receive a percentage of Newco's gross revenues and profits.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the investor officials were not in positions that would enable them to influence offset credits;
(2) the foreign official investors would recuse themselves from any government decision relating to the involved companies;
(3) both the investor officials and the American companies agreed to anti-bribery certifications, representations, and warranties; and
(4) Newco instituted additional anti-bribery compliance controls.

Full Text of Release

1995-03
September 14, 1995

Background: Requestor, an American company, sought to enter into a joint venture with, among others, an entity that was the family investment company of a relative of the leader of a foreign country. That relative, in addition to being a prominent business person, also held public and party offices. The foreign official and an immediate family member of the foreign official (the "family member"), under the provisions of the joint venture, would receive annual payments in the range of $100,000 to $250,000 for providing investment advice and business development, networking, and management consulting services, as well as a percentage of the profits the joint venture earned from government projects.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the foreign official's government and political party duties did not involve any decisions relating to the award of business in connection with the government projects sought by the joint venture and were unrelated to the official's duties for the joint venture;

(2) all partners to the joint venture, including the foreign official and family member, agreed to a number of restrictions and measures designed to prevent FCPA violations.

Full Text of Release

1996-01
November 25, 1996

Background: Requestor, a nonprofit corporation that endeavored to protect a particular world region from the dangers of environmental accidents, sought to sponsor and provide funding for up to ten government representatives from regional nations to attend Requestor's training courses in the United States. The estimated cost of that sponsorship would be $10,000 to $15,000 per year, part of which the nonprofit hoped to supplement with funding from a non-governmental organization.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, which included that the nonprofit did not seek to obtain or retain business with the regional governments, and which demonstrated that the travel costs, as well as the selection process for nominated attendees, were reasonable and appropriate.

Full Text of Release

1996-02
November 25, 1996

Background: Requestor, a U.S. corporation engaged in the manufacture and sale of commercial and military aircraft equipment, sought to renew, with modifications, an existing marketing representative agreement with a state-owned enterprise of a foreign country (the "SOE"). The SOE would serve as Requestor's exclusive sale representative in the foreign country and would be paid a commission based upon a percentage of net sales.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the SOE was not able to influence procurement decisions of the U.S. corporation's potential customers; and
(2) the agreement with the SOE contained several anti-bribery compliance provisions.

Full Text of Release

1997-01
February 27, 1997

Background: Requestor, a U.S.-based company, owned a subsidiary that intended to submit a bid to sell and service technology equipment to a foreign government. In connection with that bid, the company had entered into a representative agreement with a privately held foreign company (the "representative"). Requestor hired the representative after:

(1) interviewing several other candidates;
(2) determining that the representative was the most qualified; and
(3) conducting a due diligence investigation that uncovered no improper conduct.

Thereafter, the company learned that the representative, or a person associated with it, was accused of making an improper payment to a foreign official more than fifteen years prior. After further due diligence, including an extensive investigation by an international investigation firm, the company was unable to substantiate the allegations, and learned that the allegations may have been politically motivated, to disparage the representative or the associated person.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances. DOJ further advised, however, that in light of the allegations, the company should closely monitor the performance of the representative.

Full Text of Release

1997-02
November 5, 1997

Background: Requestor, a U.S.-based utility company, was constructing a plant in a country that lacked adequate primary-level educational facilities. Requestor planned to donate $100,000 to a government entity to fund an elementary school construction project near the location of the new plant. The company required a written agreement from the government entity guaranteeing, among other things, that the funds would only be used to construct and supply the school.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that the donation was to be made directly to the government entity rather than a foreign official.

Full Text of Release

1998-01
February 23, 1998

Background: Requestor, a U.S.-based industrial and service company, was held liable by an agency of the Nigerian government for the cleanup of environmental contamination at a site formerly leased by a subsidiary of the company. Further, the Nigerian authorities levied a $50,000 fine. The company sought to retain a Nigerian contractor recommended by officials of the Nigerian Federal Environmental Protection Agency (FEPA) in order to resolve this liability. The contractor advised the company that in order to ensure Nigerian government approvals of the cleanup:

(1) the company would need to pay the $50,000 fine to the Nigerian government through the contractor; and

(2) $30,000 of the contractor's fees included "community compensation and modalities for officials of the Nigerian FEPA and Nigerian Ports Authority."

Decision: DOJ explained that if the company proceeded with the payments for the "fine" and the "modalities," the DOJ would commence a criminal investigation. The DOJ advised that it would reconsider this conclusion if:

(1) the company paid the fine and contractor's fee (less the $30,000 previously included for "modalities") directly to the official account of the appropriate Nigerian government agency; and

(2) the Nigerian government only paid the contractor the reduced fee after environmental cleanup was complete and the Nigerian government was satisfied with the work.

Full Text of Release

1998-02
August 5, 1998

Background: Requestor, a U.S.-based company, had a wholly owned subsidiary that submitted a bid to a foreign government-owned entity to sell and service a military training program. In connection with the bid, the company intended to enter into several agreements with a privately-held company (the "representative") in the same foreign country, specifically:

(1) a settlement agreement and release in connection with an invalid prior representation agreement;
(2) a new consultant agreement, through which the representative would provide product sales and service advice and assistance; and
(3) a teaming agreement pursuant to which the company and representative would team to compete for government contracts.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including:

(1) the due diligence Requestor conducted on the representative (both for the prior representation agreement and for the proposed agreements);
(2) a legal opinion obtained by Requestor that the proposed agreements complied with the foreign country's laws; and
(3) the certifications and warranties Requestor obtained.

Full Text of Release

2000-01
March 29, 2000

Background: Joint Requestors, an American law firm and a partner of the firm who had taken a leave of absence to be a high-ranking foreign official, sought approval for the firm to make payments and provide certain benefits to the foreign official and his family for the period while he was in office.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the proposed arrangements were consistent with local law and the firm's general leave of absence practices for partners;
(2) the law firm was not currently retained to represent the foreign government, its ministries or agencies, or any client in a matter involving the foreign government; and
(3) the law firm and the official agreed to take steps to avoid potential conflicts of interest, including certain restrictions on the firm's representations while the official held office.

Full Text of Release

2001-01
May 24, 2001

Background: Requestor, a U.S. company, entered into a joint venture agreement with a French company. The two companies planned to contribute pre-existing contracts and deals to the venture, including those the French company obtained prior to the effective date of the French anti-bribery law ("FLAC"). The French company represented that:

(1) none of the contracts and transactions it was to contribute was procured in violation of applicable anti-bribery or other laws;
(2) the U.S. company could, under the agreement, terminate the joint venture or refuse to satisfy its obligations if the French company violated or breached its representations regarding prior anti-bribery compliance, and if (a) it was convicted of a FLAC violation, (b) it entered into a settlement admitting liability under FLAC, or (c) if the violation had a "material adverse effect" upon the joint venture;
(3) no funds contributed by the U.S. company, and no funds of the joint venture itself, would be used to (a) compensate the French company for the termination and liquidation of its prior agent agreements, or (b) pay any agent of the French company for any pre-existing agreements; and
(4) all agents of the joint venture would be retained pursuant to new agency agreements in accordance with the joint venture's rigorous anti-corruption compliance program.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances. However, DOJ noted several important caveats:

(1) DOJ's opinion was premised on its understanding that the French company's representation that it had not violated applicable anti-corruption laws referred, not just to the FLAC, but to the anti-bribery laws of all relevant jurisdictions;
(2) the company would face liability if the joint venture took any future action in furtherance of any prior corrupt payment to a foreign official relating to a contract contributed to the joint venture by the French company, even if the agreement to make the payment was lawful under French law when the contract was originally signed;
(3) DOJ specifically declined to endorse the "materially adverse effect" standard for terminating the joint venture agreement because it could be unduly restrictive; and
(4) DOJ's opinion did not cover prospective conduct.

Full Text of Release

2001-02
July 18, 2001

Background: Joint Requestors, a U.S. company acting through an offshore company in which it had a 50% beneficial interest and a foreign company, sought to enter into a consortium that would bid on a government business project in the foreign country. The chairman and shareholder of the foreign company advised a senior foreign official and was also, himself, a senior public education official in that country.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the foreign official's official duties did not relate to the award of the relevant business project, the relevant ministry was not under the foreign official's charge, and the foreign official did not have influence over the award in his capacity as an official in public education;
(2) the foreign official agreed to certain restrictions designed to avoid potential conflicts of interest;
(3) as per an obtained legal opinion, the proposed conduct was lawful in the foreign country;
(4) the foreign official's role in the consortium had been disclosed in the bid submissions and would be in future submissions; and
(5) the consortium agreement required each member to agree not to violate the FCPA.

Full Text of Release

2001-03
December 11, 2001

Background: Requestor was a U.S. company whose wholly owned subsidiary had, with the assistance of a foreign dealer, submitted a bid to a foreign government. Following the submission of the bid, the dealer's owner made comments to one of Requestor's employees that the employee understood to mean that improper payments to foreign officials had been or would be made to secure the bid. Requestor's agreement with the dealer had expired, and Requestor sought to renew it after having taken certain precautions.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) Requestor investigated through counsel, but was unable to substantiate, the implication of the comments;
(2) the dealer's owner had represented and agreed to certify that no such payment had been made or promised to foreign officials;
(3) the new agreement afforded Requestor with annual audit rights, rights which Requestor represented it would fully exercise; and
(4) Requestor represented that it would notify DOJ if it became aware of information that substantiated the allegation.

Full Text of Release

2003-01
January 15, 2003

Background: Requestor, a U.S. issuer, sought to purchase the stock of Company A, a U.S. company with U.S. and foreign subsidiaries. Through due diligence, Requestor learned that officers of a foreign subsidiary of Company A had made payments to foreign officials to obtain or retain business. Both Requestor and Company A commenced investigations of Company A's worldwide operations and disclosed the results to DOJ and SEC. Requestor sought to proceed with the transaction after Company A undertook several remedial actions. Requestor, however, was concerned with potential successor liability and, therefore, sought DOJ's guidance.

Decision: DOJ explained that it did not intend to take enforcement action against Requestor based on the disclosed facts and circumstances, including Requestor's undertakings that it would:

(1) disclose to DOJ any additional pre-acquisition payments to foreign officials it discovered;
(2) continue to cooperate with DOJ, SEC, and foreign law enforcement authorities;
(3) take any additional remedial measures that were appropriate, including appropriate disciplinary action against Company A employees involved in the bribery; and
(4) extend its internal controls and compliance program to Company A, ensure their implementation, and modify them as necessary.

DOJ further noted that its opinion did not apply to individuals or to any improper payments made after the acquisition.

Full Text of Release

2004-01
January 6, 2004

Background: Requestor, a U.S. law firm, sought to sponsor and present, in conjunction with a ministry of the People's Republic of China ("PRC"), a one-and-a-half-day comparative law seminar on labor and employment law in China and the United States. The stated purpose of the seminar was to educate legal and human resource professionals from both countries. The firm proposed to pay for, and would only pay for, conference rooms, interpreter services, receptions and meals, transportation and hotel accommodations for Chinese government officials traveling to Beijing, and translation and printing of seminar materials.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that the firm:

(1) had no and anticipated no business with PRC entities that were sending officials;
(2) obtained written assurances that its intended actions would not violate any law of the PRC;
(3) would not select particular officials to be invited; and
(4) would pay all costs directly to the providers or reimburse after an appropriate expenditure was made upon presentation of a receipt.

Full Text of Release

2004-02
July 12, 2004

Background: Joint Requestors were an investment group, including JPMorgan Partners Global Fun, Candover 2001 Fund, and 3i Investments plc (the "purchasers"), interested in acquiring certain companies and assets from ABB Ltd ("ABB"). Prior to the acquisition:

(1) DOJ announced guilty pleas to FCPA violations by two of the ABB subsidiaries being acquired; and
(2) SEC filed a settled enforcement action charging ABB with violating several FCPA provisions in several foreign countries.

Decision: DOJ explained that it did not intend to take enforcement action against the purchasers for violations of the FCPA committed prior to the acquisition based on the extensive due diligence performed and the significant precautions that had been and would be taken against future FCPA violations. DOJ noted, however, that the opinion did not address any prospective conduct or endorse any specific aspect of Requestors' compliance program.

Full Text of Release

2004-03
June 14, 2004

Background: Requestor, a U.S. law firm, proposed to sponsor a trip to the U.S. for twelve Chinese officials. On the trip, the officials would meet with U.S. public sector officials to discuss U.S. regulation of employment issues, labor unions, workplace safety, and legal institutions and procedures regarding workplace conflict resolution. The firm intended to pay for travel, lodging, meals, and insurance for the twelve officials and one translator during the ten-day, three-city trip.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the firm had no business before the entities that might send officials;
(2) the firm obtained written assurance the visit would not violate any PRC laws;
(3) the foreign Ministry would select the officials participating;
(4) the firm would pay all costs directly to providers; and
(5) the firm would not pay expenses for spouses, family, or other guests.\

Full Text of Release

2004-04
September 3, 2004

Background: Requestor, a U.S. company, proposed to fund a nine-day study tour for five foreign officials on a committee drafting a new law on mutual insurance. Though mutual insurance was an industry in which Requestor conducted business, the company represented that it did not write any insurance or own or plan to organize a mutual insurance company in that foreign country. The company did intend at some point to apply for a non-life insurance license in the foreign country, which required the applicant to demonstrate that it has been supportive of the country's socio-economic needs, proactive in the development of the insurance industry, and engaged in promoting foreign investment. The company intended to help satisfy these criteria by sponsoring the study tour.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the firm had only limited business, and had no pending or anticipated new business, in the foreign country or with the foreign government;
(2) the foreign government would select the participating group of officials, and those officials did not have direct decision-making power over the relevant licensing process;
(3) the only costs to be covered were economy airfare, hotels, local transportation, a per diem of $35 per day, and occasional additional meals and tourist activities; and
(4) the firm would pay all costs directly to providers and only reimburse officials upon presentation of a receipt.

Full Text of Release

2006-01
October 16, 2006

Background: Requestor, a Delaware corporation headquartered in Switzerland, sought to contribute $25,000 to a regional customs department or the ministry of finance (collectively, the "counterparty") in an African country as part of a pilot move to improve local enforcement of anti-counterfeiting laws. The money would be used for the purpose of funding incentive awards to local customs officials because counterfeiting had become a serious issue for manufacturers such as the corporation. The corporation and counterparty would execute a formal memorandum of understanding ("MOU") to encourage the mutual exchange of information related to trade of counterfeit products.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including the requirements in the proposed MOU and the additional procedural safeguards that would be in place.

Full Text of Release

2006-02
December 31, 2006

Background: Requestor, Company A, was a wholly-owned subsidiary of Company B, with operational responsibility over its own foreign subsidiary, Company C. Company C sought to retain a law firm in the foreign country to prepare foreign exchange applications, as well as represent Company C in review processes administered by a government agency of the foreign country. Company A sought an opinion regarding whether the law firm could perform these tasks for Company C, which had recently experienced difficulty in obtaining necessary foreign exchange, including delays and denials of its applications for what it viewed to be pretextual reasons.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) Company A had performed due diligence before selecting the firm;
(2) the agreement between Company C and the firm contained several anti-corruption provisions;
(3) Company A also represented that no improper payments had been made, requested, or contemplated; and
(4) the fees to be paid to the firm appeared to be competitive and reasonable.

The opinion also contained additional caveats:

(1) Company A could only rely upon DOJ's opinion so long as its disclosure of facts and circumstances was complete and remained so; and
(2) the opinion did not endorse the adequacy of Company A's due diligence and anti-corruption measures under facts and circumstances other than those described in the request.

Full Text of Release

2007-01
July 24, 2007

Background: Requestor, a U.S. company, proposed to cover all domestic expenses, including domestic economy class air travel, lodging, local transport, and meals, for six foreign officials of an Asian country's government. The officials would participate in a four-day educational and promotional tour of one of the Company's U.S. operations sites. Requestor was interested in participating in future operations in the foreign country, and the trip's purpose was to familiarize the delegates with the company's operations and capabilities, in order to help establish its business credibility.

Decision: DOJ explained that, based on the disclosed facts and circumstances, the expenses were consistent with the reasonable, bona fide expenditures affirmative defense and, therefore, it did not intend to take enforcement action. Those facts and circumstances included:

(1) the company did not conduct operations in the foreign country, though it was interested in doing so in the future;
(2) the delegates did not have direct authority over the contracts or licenses Requestor needed to operate in the foreign country;
(3) Requestor obtained written assurance the visit would not violate any local laws; and
(4) the delegates were selected by their government.

Full Text of Release

2007-02
September 11, 2007

Background: Requestor, a U.S. insurance company, sought to pay for six foreign government officials to attend a six-day educational program at the company's U.S. headquarters. The program followed the officials' attendance at a six-week internship program in the U.S. sponsored by the National Association of Insurance Commissioners. The purpose of Requestor's proposed program was to familiarize the officials with the operation of a U.S. insurance company. The company proposed to pay for domestic economy class air travel, domestic lodging, local transport, meals, modest incidental expenses, and a modest four-hour sightseeing tour.

Decision: DOJ explained that, based on the disclosed facts and circumstances, the expenses were consistent with the reasonable, bona fide expenditures affirmative defense and, therefore, it did not intend to take enforcement action. Those facts and circumstances included:

(1) the company had no non-routine business under consideration by the relevant government agency;
(2) the delegates were selected by their government;
(3) the company would not host or pay for spouses or family; and
(4) the company would pay all costs directly to providers and only reimburse officials, with modest limits, upon presentation of a receipt.

Full Text of Release

2007-03
December 21, 2007

Background: Requestor, a lawful permanent resident of the U.S., was a litigant in judicial proceedings in an Asian country relating to the disposition of a deceased relative's estate, a portion of which Requestor believed she owned. Those assets, however, were controlled by another family member. Requestor applied to the court for the appointment of an estate administrator, pending disposition of the disputed assets. In response, the court required Requestor to advance approximately $9,000 to cover anticipated expenses related to the administrator and other court costs. The court had the authority to do so, in order to "take necessary measures to preserve the estate," under the written laws and regulations of that country. Requestor further represented that there was no indication the payment was sought for the purpose of influencing the court, misusing the judge's official position, or inducing any improper behavior.

Decision: DOJ explained that, based on the disclosed facts and circumstances, it did not intend to take enforcement action on the grounds that:

(1) the payment (a) would be made to the court clerk's office as opposed to the individual judge, (b) did not appear to be for the benefit of the presiding judge or administrator personally, and (c) was not, therefore, to a foreign official as required by the FCPA; and

(2) Requestor obtained a written legal opinion that the request was explicitly lawful under the written laws and regulations of the foreign country (copies of which, along with translations, were provided to DOJ).

Full Text of Release

2008-01
January 15, 2008

Background: Requestor, a Delaware corporation, sought to have its wholly owned foreign subsidiary become a majority owner in a foreign company (the "target"), which managed certain public services of a major foreign municipality. The target was jointly owned by a foreign state-owned entity (the "SOE"), which had a 56% ownership share, and a foreign private company (the "minority shareholder"), which had a 44% share. The owner of the minority shareholder (the "individual owner") also served as the unpaid general manager of the target. Due to his position within the target, the individual owner was a "foreign official" under the FCPA. When the relevant government entities decided to fully privatize the target, the individual owner sought to purchase the SOE's shares in the target, and, thereafter, sell that 56% ownership share to Requestor at a substantial premium. Requestor initially declined to engage in the transaction because:

(1) it had concerns that the individual owner was barred from purchasing the target under the foreign country's laws and regulations; and
(2) the individual owner refused to make certain disclosures to certain foreign government entities that Requestor believed were necessary.

After it conducted substantial due diligence as to whether the foreign country's laws and regulations barred the individual owner's purchase of the SOE's shares of the target, and the individual owner's interests and the proposed premium were disclosed orally and in writing to several senior officials of the relevant government entities, Requestor's concerns were allayed, and it sought to enter into the proposed transaction.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) Requestor's due diligence efforts, which focused on both FCPA risks and compliance with local laws and regulations, were reasonable;
(2) Requestor required and obtained transparency through multiple oral and written disclosures to several senior officials of the relevant government entities;
(3) the individual owner made representations and warranties concerning past and future anti-corruption compliance; and
(4) Requestor would retain rights to terminate the business relationship if the agreement was breached in any way, including violations of anti-corruption laws.

Full Text of Release

2008-02
June 13, 2008

Requestor, Halliburton, a U.S. issuer, sought to acquire a U.K. company (the "target"). Due to U.K. legal restrictions regarding the bidding process for a public U.K. company, Halliburton would be unable to complete its FCPA and anti-corruption due diligence prior to closing. As a result, the appropriate due diligence could only be completed after the acquisition was final. Additionally, under the terms of a required confidentiality agreement, Requestor could not disclose to DOJ prior to closing any potential FCPA, corruption, internal controls, or accounting violations or issues (collectively, "potential FCPA issues") it discovered during the limited, general pre-acquisition due diligence it could perform. Before proceeding with the bidding process, Halliburton sought to know whether:

(1) acquiring the target would violate the FCPA;
(2) Halliburton would, through the acquisition of the target, inherit any FCPA liabilities stemming from target's prior unlawful conduct; and
(3) Halliburton would be criminally liable for any such unlawful conduct committed post-acquisition but prior to the completion of Halliburton's FCPA due diligence.

Halliburton proposed to DOJ a rigorous, post-closing schedule to conduct FCPA due diligence, disclose to DOJ any potential FCPA issues, and take appropriate remediation. Strict time frames for completing these post-closing steps were also proposed.

Decision: DOJ explained that, based on all the disclosed facts and circumstances:

(1) the acquisition of the target would not, by itself, constitute an FCPA violation;
(2) it did not intend to take enforcement action against Requestor regarding any of the target's pre-acquisition unlawful acts that were disclosed by Requestor pursuant to the proposed schedule, provided that Requestor proceeded with the proposed post-closing due diligence and remediation plan and schedule; and
(3) it did not intend to take enforcement action against Requestor for any unlawful acts by the target that continued post-acquisition, provided that (a) Requestor completed its due diligence and remediation according to the agreed-upon plan and schedule, and (b) any such acts (i) were committed without the knowing involvement of any of Requestor's employees, and (ii) were discovered, disclosed, stopped, and remediated according to the agreed-upon schedule.

DOJ, however, explicitly reserved the right to take enforcement action against Requestor with respect to:

(1) any post-closing violations not disclosed within the required time frame;
(2) any violation committed by the target at any time if an employee or agent of Requestor knowingly participated; and

(3) any post-closing violations identified and disclosed but not investigated to conclusion within the required time frame.

Finally, DOJ discouraged companies from agreeing in the future to limitations on the information they could disclose to DOJ.

Full Text of Release

2008-03
July 11, 2008

Background: Requestor, the domestic concern TRACE International, Inc., proposed to pay certain expenses for approximately 20 journalists to attend a press conference in Shanghai hosted by TRACE. At the press conference, TRACE intended to announce the results of its new anti-corruption tool in order to increase its membership, enhance its reputation, and promote its initiatives and commercial transparency worldwide. The journalists were employed by state-owned media outlets in China. The journalists would receive a stipend to cover necessary costs and non-local journalists would also be reimbursed for the cost of domestic economy class transportation and one night's lodging. TRACE further represented that:

(1) it was common practice in China for businesses to provide such stipends and travel expenses to journalists in connection with press conferences; and
(2) the journalists' employers did not typically reimburse them for such work-related expenses.

Decision: DOJ explained that based on the disclosed facts and circumstances, the expenses were consistent with the reasonable, bona fide expenditures affirmative defense and, therefore, it did not intend to take enforcement action. Those facts and circumstances included:

(1) TRACE had no pending business with any government agency in China;
(2) the payments were not conditioned on coverage of the conference or the nature of the coverage;
(3) the stipends were reasonable approximations of the necessary costs expected to be incurred by the journalists;
(4) TRACE would provide advance written notification of the stipends and their purpose to the journalists' employers; and
(5) TRACE would accurately record the payments in its books and records.

DOJ noted, however, that it gave no weight to whether the payments were part of a common practice in China.

Full Text of Release

2009-01
August 3, 2009

Background: Requestor, a U.S. company, designed and manufactured a specific medical device. A representative from the company met with a senior official of a foreign government agency, who stated that the government would be interested in technically evaluating the device. If the evaluation were favorable, the government would endorse the device, which would benefit Requestor in tenders for government purchases of the device (for later resale, at subsidized rates, to and use by patients). To be evaluated, the company would provide, free of charge, a total of one hundred sample devices, along with necessary accessories and follow up support, to ten health centers in the foreign country. The total cost of the donation was valued at $1.9 million. The senior official was not expected to benefit personally from this arrangement.

Decision: DOJ concluded that, based on the disclosed facts and circumstances, it did not intend to take enforcement action because the proposed donation would fall outside the scope of the FCPA. DOJ explained that Requestor was providing the donated products and services to the foreign government, as opposed to individual government officials, for ultimate use by patients who would be selected pursuant to a transparent process based on objective criteria (including, e.g., demonstrated financial need), and which would exclude relevant government officials and employees, as well as their family members.

Full Text of Release

2010-01
April 19, 2010

Background: Requestor, a U.S. company, entered into a contract with a U.S. government agency to design, develop, and construct a facility in a foreign country as part of the U.S. agency's execution of a contract to furnish assistance to the foreign government. Under Requestor's contract, Requestor was required to hire and compensate individuals to work at the facility as directed by the U.S. agency. The request was made because the U.S. agency directed Requestor to hire (and compensate) a foreign official to serve as the director of the facility, after this official was chosen by the government of the foreign country. The U.S. agency and foreign government contemplated that at the conclusion of the initial one-year employment contract with the foreign official, the compensation obligations would pass to the foreign government.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that:

(1) the foreign official was hired according to an agreement between the U.S. government agency and the foreign government;
(2) Requestor did not select the official, but was contractually bound to hire and compensate the official, who was appointed by the foreign government based on the official's qualifications;
(3) the foreign official's then-current official position was unrelated to the position of facility director; and
(4) as facility director, the individual would not be in a position to influence any decision affecting, perform any services on behalf of, or receive any direction from, Requestor.

Full Text of Release

2010-02
July 16, 2010

Background: Requestor, a non-profit microfinance institution based in the United States, was in the process of converting its local operations from nonprofit organizations to commercial financial institutions. One such operation was a Eurasian subsidiary that was started with capital from a foreign aid source. The subsidiary no longer received grant support, as it was self-sustaining, and sought to become a bank. The foreign agency that regulated the subsidiary was concerned the transition from "humanitarian" status to commercial status could result in grant funds intended for humanitarian assistance in the Eurasian country either being withdrawn from the country or being used to benefit private investors. As a consequence, the agency required that the subsidiary make a grant to one or more local microfinance institutions specified by the agency in order to convert its status. Requestor intended to comply but was concerned that compelling the subsidiary to provide grant funding to specified institutions could violate the FCPA.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances, including that the subsidiary had:

(1) conducted appropriate due diligence; and
(2) proposed to institute several controls that would ensure with reasonable certainty that no funds would be transferred to a foreign official.

Full Text of Release

2010-03
September 1, 2010

Background: Requestor, a limited partnership headquartered in the United States, was working with a foreign government to pursue a new approach to natural resource infrastructure development. Requestor sought to hire a consultant (a U.S. partnership solely owned by a U.S. citizen, with extensive contacts in the business community and government of the foreign country) to represent Requestor in discussions with the foreign government. The consultant had existing contracts to represent the foreign government, including for lobbying efforts in the U.S., and to represent ministries of the foreign government that would play a role in discussions of Requestor's initiative. Because of the consultant's role in representing the foreign government and because the consultant would continue to represent the foreign government subsequent to becoming a consultant for Requestor, a number of safeguards were put in place to avoid potential conflicts of interest between the consultant's representation of Requestor and the consultant's separate and unrelated representation of the foreign government.

Decision: DOJ explained that it did not intend to take enforcement action based on the disclosed facts and circumstances. Although the consultant had acted and would act on behalf of the foreign government as its agent and, therefore, could be under certain circumstances a "foreign official" for purposes of the FCPA, DOJ concluded that the consultant was not acting on behalf of the foreign government based on a number of existing and/or proposed safeguards.

DOJ, however, noted the following caveats:

(1) its opinion was limited to the narrow question of whether the consultant was a foreign official;
(2) the proposed relationship (including payment to the consultant of a signing bonus and success fees) increased the risk of prospective FCPA violations; and
(3) future enforcement actions were not foreclosed should an FCPA violation occur during the execution of the consultancy.

Full Text of Release

2011-01
June 30, 2011

Background: Requestor, a U.S. adoption service provider, sought to pay specific expenses for two foreign government agency officials to travel to the United States for two days (not including travel). The purpose of the trip was to educate the officials about Requestor's services. Requestor intended to pay for economy class air fare, domestic lodging, local transport, and meals.

Decision: DOJ explained that, based on the disclosed facts and circumstances, the expenses were consistent with the reasonable, bona fide expenditures affirmative defense and, therefore, it did not intend to take enforcement action. Those facts and circumstances included:

(1) Requestor had no pending, non-routine business before the foreign government agencies that employed the officials;
(2) the foreign government agencies would select the participating officials;
(3) the firm would pay all costs directly to providers; and
(4) the firm would not host spouses or family members.

Full Text of Release

2012-01
September 18, 2012

Background: Requestor, a U.S. lobbying firm, sought to represent a foreign country in that country's U.S. lobbying activities. Requestor planned to contract with a consulting company to assist it in these efforts. One of the three partners of the consulting company was a member of the royal family of the foreign country. The royal family member was a member only through tradition and custom, not through blood, and had held only one governmental position for less than a year in the late 1990s. Except for that prior position, the royal family member had never acted in any capacity for the foreign country or any of its agencies. He had, however, worked in his personal capacity with numerous companies who wished to do business in the foreign country and needed a local sponsor from the foreign country, and had interacted (also in his personal capacity) with various government officials of the foreign country. Requestor sought an opinion as to whether:

(1) the royal family member was a "foreign official" under the FCPA; and
(2) the consulting contract would result in an enforcement action.

Decision: DOJ opined that, under the particular facts and circumstances disclosed, the royal family member was not a foreign official, so long as he did not represent, directly or indirectly, that he was acting either on behalf of the royal family or in his capacity as a member of the royal family. DOJ noted that a person's mere membership in the royal family of a foreign country, by itself, does not automatically result in that person qualifying as a "foreign official." Rather, the question requires a fact-intensive, case-by-case determination that will turn on a number of factors. DOJ also explained that the proposed consultancy agreement could go forward without enforcement action, based on the disclosed facts and circumstances, including that:

(1) there was no indication that (a) the royal family member had the power to affect those foreign officials who had the authority to decide whether to hire Requestor, or (b) that the provision of benefits to the royal family member would corruptly influence other royal family members or government officials to award business to Requestor improperly;
(2) Requestor and the proposed consultant had taken steps to comply with the FCPA and other anti-bribery laws.

DOJ noted, however, the following caveats:

(1) DOJ's opinion did not cover any future business relationship with the royal family member or the consulting company; and
(2) an enforcement action would not be foreclosed if an FCPA violation occurred during the performance of the proposed engagement.

Full Text of Release

2012-02
October 18, 2012

Background: Requestors, 19 U.S. non-profit adoption agencies, proposed to host 18 foreign officials during two visits to the United States. The officials included those with direct responsibilities relating to adoptions in the foreign country (including officials from the foreign government's ministry that oversees adoptions and the presiding judge of the court that ultimately rules on adoption requests) and those with indirect responsibilities (including, for example, two members of the foreign country's legislature, which can pass adoption-related legislation). The purpose of the 2-day trips (not including travel) was to allow those officials to learn more about the Requestors' work and see how adopted children from the foreign country have adjusted to life in the United States. The Requestors proposed paying for the officials' airfare (including business class airfare on international flights for the high-ranking officials), lodging, meals, and local transport.

Decision: DOJ explained that, based on the disclosed facts and circumstances, the expenses were reasonable and bona fide expenditures that were directly related to the promotion, demonstration, or explanation of the Requestors' products or services and, therefore, the proposed funding could proceed without enforcement action. Those facts and circumstances included:

(1) other than events of nominal cost that involved families who adopted children from the officials' country, Requestors were not funding, organizing, or hosting other entertainment, side trips, or leisure activities for the officials;
(2) Requestors would pay all expenses directly to providers;
(3) no compensation, per diems, stipends, or spending money would be provided to the officials;
(4) the business class airfare for the high-ranking officials, as proposed, was permitted by the foreign country's government;
(5) the participating officials were selected solely by their government; and
(6) Requestors would not host spouses or family members.

Full Text of Release

2013-01
December 19, 2013

Background: Requestor, a law firm partner, proposed to pay the urgently needed medical expenses of a foreign official's daughter after learning that the foreign official—an employee of a firm client with whom the partner had developed a personal friendship—could not afford such expenses. Requestor represented that his intention in paying these expenses was purely humanitarian and not intended to influence any decision of the foreign official or government. Requestor proposed to use only personal funds to pay for the expenses and not seek reimbursement from his law firm. Requestor sought an opinion as to whether the DOJ intended to take enforcement action based on the proposed payment.

Decision: DOJ explained that, based on the facts and circumstances, the payment of these medical expenses did not display indicia of corrupt intent and, therefore, the proposed payment could proceed without enforcement action. Those facts and circumstances included:

(1) The foreign official does not, had not, and will not play any role in the decision to award the foreign government's legal business to Requestor's law firm.
(2) Requestor and Foreign Official have each transparently informed their respective employers of the proposed payment of expenses and neither had objected.
(3) The Attorney General of the foreign government expressly stated in a letter that the proposed gift would not affect the decision to award work to Requestor's law firm and, under the circumstances presented, was not illegal under that country's laws.
(4) The foreign government's public contracting laws required transparent reasoning for the contracting of legal work and criminally punished corrupt behavior.
(5) Requestor intended to reimburse the medical provider directly, ensuring that the payments will not be improperly diverted to the foreign official.

Full Text of Release