

No. 93-01

Date: April 20, 1993

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The Department has reviewed the FCPA Opinion request by a major commercial organization with its principal place of business in Texas. The requestor has entered into a joint venture partnership agreement to supply management services to a business venture owned and operated by a quasi-commercial entity, which entity is wholly owned and supervised by the government of a former Eastern bloc country.

The foreign partner has been responsible for financing the joint venture; the United States partner's contribution is primarily in the area of management expertise. The parties have entered into a profit sharing arrangement regarding the income generated by the joint venture. The parties have registered the partnership as a separate legal entity in the foreign state, and they propose to select a board of directors to oversee the joint venture partnership's activities. Some directors will represent the United States partner and the others will be drawn from the foreign partner, which we have concluded is an instrumentality of the foreign government for purposes of the FCPA. The parties propose to pay directors' fees to the foreign directors of approximately \$1,000 per month. These fees approximate their regular income from their employment by the foreign partner. The United States partner has requested a determination by the Department of Justice whether this proposed arrangement would violate the FCPA with respect to the payment of the directors' fees and expenses, given the circumstances that the foreign directors are also employees of a state-owned and controlled entity.

The requestor has represented that although the joint venture partnership or another entity owned by the United States partner in the first instance will pay the foreign directors' fees, the fees ultimately will be reimbursed by the foreign partner either from the foreign partner's share of the net profits from the partnership or from its other funds. Moreover, the United States partner will undertake to educate the foreign directors regarding the avoidance of possible FCPA violations in the conduct of the partnership's business.

Based on all the facts and circumstances, as represented by the requestor, the Department does not presently intend to take any enforcement action with respect to any of the prospective directors' fee payments described in this request.