

No.: 06-02

Date: December 31, 2006

Foreign Corrupt Practices Act Review

Opinion Procedure Release

Company A (also referred to herein as the "Requestor") is a wholly-owned subsidiary of Company B, a U.S. issuer, and requests an opinion with respect to the operations of Company A's subsidiary in a foreign country, Company C. Company C seeks to retain a law firm in the foreign country ("the Firm"). The Firm would aid Company C in obtaining foreign exchange from a government agency of that country ("the Agency"), by preparing its foreign exchange applications to that Agency and representing Company C during the review process. Company C plans to hire the Firm at a substantial rate which represents approximately 0.6% of the value of the foreign exchange requested each month once its representation commences and to pay a substantial flat fee for preliminary and preparatory work performed by the Firm thus far.

As set forth in its letter of request, Company A has operational responsibility over the prospective retention of the Firm. Company A requests an opinion pursuant to 28 C.F.R. Part 80 to confirm that the specified prospective conduct conforms with the Department of Justice's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1 and 78dd-2.

Company C has recently experienced difficulty in obtaining foreign exchange through the Agency, which controls the conversion of foreign currency to U.S. dollars. At one time, the application for foreign exchange process ran smoothly, and Company C's applications were approved promptly. However, the process has slowed considerably and has become unpredictable in recent months, slowing Company C's access to foreign exchange and reducing the amount of foreign exchange the company is able to receive. Agency applications are lengthy documents, and Company C's applications have recently been rejected for minor reasons. Company C has concluded that its only option is to eliminate any technical errors in its applications. Its hope is that if the applications are perfected, there will be fewer pretextual delays and denials by the Agency. To perform the work, Company C proposes to hire the Firm to prepare its Agency applications and represent Company C during the review process.

To ensure that the Firm does not violate the FCPA, the Requestor has taken the following steps:

1. The Requestor, under the specific and unique circumstances described in the Request, has taken the following steps in an effort to perform due diligence in selecting the Firm:
 - a. Attorney A, the principal attorney at the Firm, was referred to Company C several years ago by another law firm in the foreign country with which Company C has a long standing relationship. A prominent criminal attorney in the foreign country also recommended Attorney A. The Requestor has not found any information that contradicts the Firm's reputation for ethical and professional conduct.
 - b. Company C has previously retained Attorney A on several matters including a criminal case and a major labor case. Company C worked closely with Attorney A and was very favorably impressed with the quality of his representation.
 - c. Both the General Counsel for the Requestor and outside U.S. counsel representing Company A on this matter, have interviewed the lead partner of the firm, Attorney A. They have discussed his plan for the project, his

understanding and commitment to performing the representation under rigorous ethical standards, and his comprehension of the FCPA. Both counsel found him to be professional and competent.

2. The agreement between Company C and the Firm contains several provisions designed to prevent corruption from occurring. These include:

- a. All employees of the Firm, as well as any third parties retained to work on this matter, will be required to sign a form stating that they have not and will not ever make any improper payment to any official and will comply with all applicable laws and regulations, including those of the foreign country and the United States.

- a. All employees of the Firm, as well as any third parties retained to work on this matter, will be required to sign a form stating that (i) they are not and have not been a government official in the last three years, and (ii) their parents, spouse, siblings, and children are not and have not been a government official in the last three years.
- b. The contract between Company C and the Firm requires that no payments be made that would be prohibited under the FCPA or the law of the foreign country.
- c. The contract also requires that the Firm know and understand Company B's Government Relations Policy, which includes a commitment to comply with all applicable laws, to avoid the appearance of impropriety, and to conduct all affairs in a proper business-like manner.
- d. The contract further requires written progress reports, at least weekly, relating to the consultancy, including the status of inquiries and negotiations and a full account of any payments made and expenses incurred.
- e. The contract also requires that the Firm give Company C the right to audit the Firm's records with respect to this engagement, to be exercised by Company C as appropriate.

3. The fees charged by the Firm have been determined to be reasonable by the Requestor for the following reasons:

- a. The work involved in preparing and vetting the Agency applications, filing them with the Agency, shepherding them through the process, and providing related services, is labor intensive. It also will require that the Firm hire and train additional outside legal and other professionals to assist in the undertaking. All expenses and fees for these additional lawyers will be covered in Company C's monthly fee.

- a. Attorney A has already devoted considerable time to understanding the foreign exchange process, reviewing the extensive applications and documentation submitted by Company C to the Agency, and meeting with Company C.
- b. The Firm's monthly fee will be approximately 0.6% of the value of the currency to be exchanged through the Agency. Two other law firms also made offers to perform the same work, including an unknown law firm that would charge 5% of the application amount and a well known law firm that would charge 8-10% of the application amount. The Firm's offer was the lowest received by Company C.
- c. The Requestor represents that legal representations on a flat fee basis, as opposed to an hourly rate, are customary in the foreign country.

4. The Requestor also made the following representations:

- a. There has been no suggestion by anyone that an improper payment is necessary or desirable to solve this problem and the Requestor represents that it has no reason to believe that any of the fees paid to the Firm would be used for that purpose.

- a. Attorney A does act as an external advisor to the foreign country's Central Bank. However, the Central Bank is independent from the Agency and has no

role with respect to the Agency's decisions concerning foreign exchange applications.

- b. All parties understand that the problems with the Agency may not be solvable and that success obtaining foreign exchange may not be achieved.

In summary, the Requestor's representations include that: (a) no improper payments have been made or requested, nor does the parties' agreement contemplate the making of any improper payments; (b) the Firm and its lead counsel have a reputation for honest dealings and the Requestor, under the specific and unique circumstances described in the Request, has performed due diligence in selecting the Firm; (c) the Requestor and the Firm have agreed to implement a variety of anti-corruption measures to monitor the Firm; and (d) the fees to the Firm, while high, appear to be competitive and reasonable under the circumstances.

Based upon all of the facts and circumstances, as represented by the Requestor, the Department does not presently intend to take any enforcement action with respect to the proposed retention of the Firm as described in this request. This Opinion, however, is subject to the following important caveats: The FCPA Opinion Letter and this Release can be relied upon by the Requestor only to the extent that the disclosure of facts and circumstances in its request is accurate and complete and remains accurate and complete. Additionally, this Opinion Letter and Release do not purport to endorse the adequacy of the Requestor's due diligence and anti-corruption measures under facts and circumstances other than those described in the request. Finally, this Opinion Letter and Release have no binding application on any party which did not join in the request.