

APPENDIX J

DOJ OPINION RELEASES 2000 - 2001

Date: March 29, 2000

FCPA Opinion Procedure Release 2000 - 01

The Department has received a request from a U.S. law firm ("Requestor") and a foreign partner of Requestor ("Foreign Government Official"),¹ who has been appointed to a high-ranking position in the government of a foreign country ("Country X"). The Foreign Government Official has taken a leave of absence from Requestor. Requestor proposes to make the following payments and provide the following benefits to the Foreign Government Official while he serves as a foreign public official:

1. *Health, accidental, life and dependent life insurance for the Foreign Government Official and his family while he is in office.* According to Requestor, the Foreign Government Official would not be able to afford equivalent insurance coverage on his government salary. Requestor states, however, that it will not be paying any portion of the cost of this insurance and that the benefit to the Foreign Government Official will derive from his being able to obtain the insurance at the group rate.

2. *Payment of prospective "client credit" in a lump sum, discounted to present value.* Requestor's partners are entitled to an annual payment related to clients whose work they bring to the firm. Requestor ordinarily pays client credits to partners on leave, although it is usually done on an annual basis, based upon actual billing and net of expenses. In this case, Requestor proposes to pay the Foreign Government Official a one-time payment calculated to approximate the payments to which he would be entitled as a partner for the next four years (discounted to present value) based on his average work origination credit for the past two years. Requestor states that the purpose of this departure from its normal practice is to have a "greater separation" between the Firm and the Foreign Government Official.

3. *Interest on the Foreign Government Official's partnership contribution.* Consistent with its practice with respect to other partners on leave, Requestor proposes to pay the Foreign Government Official interest on his capital contribution which will remain on deposit with Requestor during his leave of absence. The interest will be paid at a widely available bank rate and will be identical to the interest paid to all Requestor partners on their partnership contributions.

¹Ordinarily foreign officials are not covered by the FCPA, *see United States v. Castle*, 925 F.2d 831 (5th Cir. 1991), and cannot be the recipient of a FCPA Opinion. In this matter, however, the foreign official in question is also a director of an American law firm and is therefore a domestic concern in his own right. *See* 15 U.S.C. § 78dd-2(h)(1).

4. *Guarantee of return to full partnership and its attendant privileges and profits when he leaves office.* Although no actual payment will be made to the Foreign Government Official in respect of this benefit, the Foreign Government Official will benefit upon his return to Requestor from any increase in or award of business to Requestor during his leave of absence.

Requestor has obtained an opinion of local counsel that the proposed payments to a sitting official of the Country X's government is not in violation of local law.

Requestor has represented that it is not currently retained to represent or to advise the government of Country X or its ministries or agencies, nor it is currently retained to represent any client in a matter involving the Government of Country X. It acknowledges, however, that it is not able to predict future business. Accordingly, to avoid any possibility that the above-described benefits could be construed as being intended to influence the Foreign Government Official in the exercise of his official duties, Requestor has executed a declaration to the Department of Justice agreeing that:

- i. it will not represent any clients before the foreign official's ministry;
- ii. it will maintain a list of all clients previously represented by the Foreign Government Official or for which the Foreign Government Official is entitled to a client credit;
- iii. that it will not represent or advise such clients in any matter involving doing business with the Government of Country X, its ministries, and its agencies; and
- iv. that it will not represent or advise such client in any matter involving lobbying the Government of Country X, its ministries, its agencies, and its legislative bodies for or against government policies or legislation.

In addition, Requestor undertakes to inform the Foreign Government Official whenever he should recuse himself in a matter involving Requestor or a Requestor client.

For his part, the Foreign Government Official, to ensure that no payment or benefit from Requestor can be construed as being intended or having the effect of influencing him in his official duties, has filed a declaration in which he undertakes to recuse himself and to refrain from directly or indirectly participating or taking any action to affect decisions by the Government of Country X relating to:

- (i) the retention of Requestor to advise or to represent the Government of Country X, its ministries, or its agencies;
- (ii) any government business, whether or not related to a specific transaction or contract with any of Requestor's current or former clients;

(iii) any government business, whether or not related to a specific transaction or contract, with any client that he previously represented while he was a partner at Requestor or for which he is entitled to a client credit from Requestor; and

(iv) any matter in which Requestor or a Requestor client has lobbied the government for or against government policies or legislation.

Based upon all the facts and circumstances, as represented by Requestor and the Foreign Government Official, the Department does not presently intend to take any enforcement action under the FCPA with respect to the payments and provision of other benefits by Requestor to the Foreign Government Official.

This FCPA Opinion Request herein, and this release, have no binding application to any party which did not join in the request and can be relied upon by Requestor and the Foreign Government Official only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

No. 01-01

Date: May 24, 2001

FCPA Opinion Procedure Release 2001-01

The Department has reviewed the FCPA Opinion request by a U.S. company ("Requestor"), which plans to enter into a joint venture with a French company. The Requestor and the French company will each own 50% of the joint venture and will share the profits and losses of the joint venture equally. Both companies plan to contribute pre-existing contracts and transactions to the joint venture, including contracts procured by the French company prior to the effective date of the French Law No. 2000-595 Against Corrupt Practices ("FLAC").

The Requestor represents that it has taken a number of precautions to avoid a knowing violation of the Foreign Corrupt Practices Act ("FCPA"). The Requestor has asked whether, given the nature of these precautions, it will be deemed to have violated the FCPA by entering into the joint venture should it later become apparent that one or more of the contacts contributed by the French company were obtained or maintained through bribery.

With respect to the proposed joint venture, the Requestor has made the following representations:

1. The French company has represented to the Requestor that none of the contracts and transactions to be contributed by the French company were procured in violation of applicable anti-bribery or other laws. The Requestor has not represented any facts which would indicate that the French company's representation is, or may be, false.
2. In the event that the Requestor learns that the French company has breached the foregoing representation, the Requestor may, under the joint venture agreement, terminate the joint venture or refuse to satisfy obligations under the agreement in the following circumstances: (i) the French company is convicted of violating the FLAC; (ii) the French company enters into a settlement with an admission of liability under the FLAC; or (iii) the Requestor learns of evidence that the French company violated anti-bribery laws and that violation, even without a conviction or settlement, has a material adverse effect upon the joint venture.
3. The French company has terminated all agent agreements related to the contracts that it will contribute to the joint venture that were effective prior to January 1, 2000, and liquidated all payments obligations owed to those agents. None of the obligations for these agreements between the agents and the French company will be contributed to or retained by the joint venture. Accordingly, no funds contributed by the Requestor to the joint venture, nor any funds of the joint venture itself, will be

expended to pay any compensation to the French company for the termination and liquidation of agent agreements for the period prior to January 1, 2000.

4. The French company has entered into agent agreements that came into effect after January 1, 2000. Although the French company will retain some obligations to pay commissions and other compensation to these agents for work done on contracts that will be contributed to the joint venture, none of these obligations will be contributed to or retained by the joint venture. Accordingly, no funds contributed by the Requestor to the joint venture, nor any funds of the joint venture itself, will be expended to pay any compensation to any agent of the French company for any existing agreements or obligations entered into in connection with contracts contributed to the joint venture.
5. The joint venture will enter into new agent agreements in accordance with a rigorous compliance program designed to avoid corrupt business practices. Pursuant to the joint venture agreement and the joint venture's compliance program, no party to the joint venture will propose the hiring of an agent known to have engaged in illegal or unethical conduct. Both joint venture partners have the right to veto a proposed agent if the partner reasonably believes that the proposed agent has engaged in illegal conduct.

With respect to Requestor's entry into the Joint Venture with the French company, and absent any knowing act in the future on the part of Requestor in furtherance of a prior act of bribery (or the offer or promise to pay a bribe, or authorization thereof) on the part of, or on behalf of, the French company concerning the contracts contributed by the French company to the Joint Venture, and 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 the Requestor's proposed participation in the joint venture with the French company.

This opinion, however, is subject to several important caveats:

1. The Department specifically notes that the French company's representation is not limited to violations of the FLAC, and, for that reason, interprets the French company's representation to mean that the contracts were obtained without violation of either French law or the anti-bribery laws of all of the jurisdictions of the various government officials with the ability to have influenced the decisions of their government to enter into the contracts to be contributed by the French company to the joint venture. Should, however, the French company's representation in fact be limited to violation of then-applicable French law, the Requestor, as an American company, may face liability under the FCPA if it or the joint venture knowingly take any act in furtherance of a payment to a foreign official with respect to previously existing contracts irrespective of whether the agreement to make such payments was lawful under French law when the contract was entered into.

2. The Department is concerned that the "materially adverse effect" standard for terminating the joint venture agreement may be unduly restrictive. Should the Requestor's inability to extricate itself result in the Requestor taking, in the future, acts in furtherance of original acts of bribery by the French company, the Requestor may face liability under the FCPA. Thus, the Department specifically declines to endorse the "materially adverse effect" standard.
3. Although the Department views the Requestor's representations concerning the joint venture's compliance program's restrictions on the future hiring of agents to be a significant precaution to avoiding illegal payments to foreign government officials, the Department's opinion should not be deemed to endorse any specific aspect of the compliance program to be implemented by the joint venture.
4. The Department's opinion does not speak to prospective conduct by the Requestor following the commencement of the joint venture.

No. 01-02
Date: July 18, 2001

FCPA Opinion Procedure Release 2001-02

The Department has reviewed the joint request of an American company and a foreign company that was submitted on April 13, 2001.

The foreign company, a diversified trading, manufacturing, contracting, service, and investment organization, and the American company, through an offshore company in which it has a 50% beneficial ownership interest, plan to enter into an agreement to form a Consortium that will bid on and perhaps engage in a prospective business relationship with the government of the foreign company's home country. The requestors have asked for a determination of the Department's present enforcement intention under the FCPA, given the circumstance that the chairman and shareholder of the foreign company acts as an advisor to one of his country's senior government officials and is a senior official in public education in that country.

The requestors, as well as the chairman of the foreign company himself, have signed the FCPA opinion request and have represented, among other things, that:

1. The foreign company's chairman's government duties do not involve him acting in any official capacity concerning the award of the relevant business project. According to a legal opinion of counsel from the foreign country, submitted by the requestors, the tender for the business project was issued by ministries or agencies that are not under the charge of the foreign company's chairman in his official government duties.
2. The foreign company's chairman will not initiate or attend any meetings with his country's government officials on behalf of the Consortium. His country's law prohibits it.
3. The foreign company's chairman will recuse himself and will not participate in his official capacity in any discussion or consideration of or decision about the award of the business project, which could be construed as promoting in any matter the activities and business of the Consortium, or any other interest or business of any company affiliated with a Consortium member. The Consortium's bid submissions have informed the relevant foreign government ministries, agencies, and officials of the foreign company's chairman's relationship with the Consortium and of his recusal on any matters relating to the business project that are brought before those ministries, agencies, and officials. Future Consortium bid submissions will do the same.
4. The foreign company's chairman's position as a senior official in public education cannot affect or influence his government's process of reviewing the Consortium's bid and grants him no influence over the business project.

5. According to the requestors, the foreign company's chairman, and the legal opinion of the requestors' foreign counsel, the Consortium's formation and contemplated activities do not violate the laws of the foreign country, despite the foreign company's chairman's position in the government and as a senior official in public education.

6. The Consortium agreement will provide that each member acknowledges its awareness and understanding of the applicability of the FCPA to the Consortium's bid on, and possible execution of, the business project, and each party will agree not to violate the FCPA. Any failure by a Consortium member to comply with this provision of the agreement automatically grants the non-breaching member the right to terminate the Consortium agreement.

Based upon all of the facts and circumstances, as represented by the requestors, the Department does not presently intend to take an enforcement action with respect to the prospective contractual relationship described in this request.

The FCPA Opinion Letter herein, and this release, have no binding application to any party which did not join in the request, and can be relied upon by the requesting parties only to the extent that the disclosure of facts and circumstances in their request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

No. 2001-03

Date: December 11, 2001

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The Department has received a request from a U.S. company whose wholly-owned subsidiary has, with the assistance of a foreign dealer, submitted a bid to a foreign government for the sale of equipment to the government. Following submission of the bid, the dealer's president and principal owner ("dealer's owner") made comments to an employee of the requestor that the employee understood to mean that payments had been made or would be made by the dealer's owner to government officials so that the requestor's bid would be accepted. The requestor's agreement with the dealer has expired and, should the requestor's bid be accepted, it would like to enter into a new agreement with the dealer. Pursuant to this proposed Dealer Agreement, the dealer would be responsible for the provision of services in connection with the equipment sale.

With respect to the bid and the proposed new Dealer Agreement, the requestor has made the following representations.

1. The requestor, through its counsel, has investigated the comments of the dealer's owner and found no information substantiating the implication of the comments, i.e., that the dealer made payments or promises of payments to a government official so that the requestor's bid would be accepted.
2. The dealer's owner has represented to the requestor that no payments were made or promised to officials of the foreign government in connection with the equipment sale.
3. The dealer would certify in the proposed Dealer Agreement that no payments to government officials in connection with the requestor's business were made or will be made and that if such payments are made, the requestor may terminate the Dealer Agreement and withhold any payments otherwise owed to the dealer under the agreement.
4. The proposed Dealer Agreement would provide that the requestor may annually audit the books and records of the dealer to ensure the dealer's compliance with the representations and warranties contained in the Dealer Agreement, including the dealer's representations and warranties with respect to the FCPA. The requestor has represented to the Department that it will fully exercise this right.
5. The requestor will timely notify the Department if it becomes aware of any information that substantiates the allegation that a payment was made or promised to an official of the foreign government in connection with the requestor's bid.

In addition, the dealer's owner has represented directly to the Department that neither the dealer's owner nor anyone acting on behalf of the dealer has made payments or promised to make payments, or will make payments or promise to make payments, to officials of the foreign government in connection with the equipment sale.

Based on all the facts and circumstances, as represented by the requestor and the dealer's owner, the Department does not presently intend to take any enforcement action with respect to the Dealer Agreement between the requestor and the dealer.

This FCPA Opinion Release has no application to any party which did not join in the request, and can be relied upon by the requesting party only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.