

No. 93-02

Date: May 11, 1993

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The United States Department of Justice has received an opinion request from an American company which seeks to enter into a sales agreement with an entity in a foreign country. The entity is a government-owned business which holds a licence giving it the exclusive right to manufacture, sell, purchase, import, and export all defense equipment for that country's armed forces. The law of that country requires the military to deal only through the government-owned business.

The government-owned business acts as an agent on behalf of the government's military forces, and not on behalf of the potential supplier. However, in order to do business with the military in that country, all foreign suppliers must enter into a written agreement with the government-owned business under which the supplier agrees to pay to the government-owned business a percentage of the total contract price relating to the sale of defense equipment. The government-owned business's board of directors are members of the procuring military agency.

The company has represented that it will not enter into an agreement with the government-owned business which would require the company to pay to the government-owned business a percentage of the total contract price relating to the sale of defense equipment. Rather, the company will enter into an agreement with the government-owned business according to which the company will pay all commissions directly to the country's treasury or, in the alternative, the commissions will be deducted and withheld by the government customer from the purchase price. Therefore, the company will make no payments to the government-owned business or to any foreign officials.

Based upon all the facts and circumstances disclosed to us by the requestor, the Department does not presently intend to take an enforcement action with respect to the agency relationship as proposed by the requesting party.

The FCPA Opinion Letter 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 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.