

No. 23-1

Date: August 14, 2023

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department of Justice (the “Department”) has reviewed the Foreign Corrupt Practices Act (“FCPA”) Opinion request of a child welfare agency based in the United States (“Requestor”). The Department received the request (“Request”) on or about June 26, 2023, and the Requestor submitted supplemental information through July 14, 2023. The Requestor is a “domestic concern” under 15 U.S.C. § 78dd-2(h)(1) and therefore is eligible to request an Opinion of the U.S. Attorney General, pursuant to 28 C.F.R. § 80.4, regarding whether certain specified, prospective – not hypothetical – conduct conforms with the Department’s present enforcement policy regarding the anti-bribery provisions of the FCPA.

Background

According to the Request, the Requestor is an adoption service provider accredited to provide adoption services in a foreign country (the “Foreign Country”). The Requestor represents that the Central Authority for Adoption of the Foreign Country informed the Requestor of a new requirement that officials of the Foreign Country’s government visit with some families that have adopted children from the Foreign Country on an annual basis to ensure the success of the adoptions.

In connection with this new requirement, the Requestor proposes to pay for certain expenses for two government officials from the Foreign Country for a five-day trip to Massachusetts, New York, and Washington, D.C. The two officials will be chosen by a government agency of the Foreign Country and intend to travel to the United States for the purpose of completing post-adoption supervision, including meeting with families and their adopted children and meeting with the Requestor’s leadership at its offices to learn more about the Requestor’s processes and regulations. The Requestor has represented, among other things, that:

- The Requestor will pay for economy class airfare, domestic lodging at a mid-range hotel, local transportation, and meals (some of which will be in conjunction with family visits and meetings). The Requestor will pay these costs directly to the providers.
- The Requestor also proposes to organize and pay for the cost of certain recreation, such as a visit to a museum or city tour, with cost not exceeding \$100 per person and paid directly to the provider.
- The Requestor has no non-routine business (e.g., licensing or accreditation) under consideration by the relevant foreign government agencies. The Requestor’s routine

business includes seeking approval of pending adoptions from the relevant government agencies of the Foreign Country and complying with governmental post-adoption requirements. This business is guided by an international treaty and administrative rules with identified standards.

- The Requestor will not select the particular officials who will travel. That decision will be made solely by the relevant foreign government agency in the Foreign Country.
- The Requestor will pay the above-described costs for and host only the designated officials, not their spouses or family members.
- Any souvenirs provided to the officials will be of nominal value and include the Requestor's logo.
- The Requestor has invited other adoption agencies accredited to provide adoption services to the Foreign Country to join it in hosting the foreign officials. At this time, no other agency has accepted the Requestor's invitation.
- Apart from the expenses identified above, the Requestor will not compensate the foreign officials for their visit and will not provide them with cash or a daily stipend. All of the costs and expenses identified above will be paid directly to the providers.
- The Requestor will not pay any additional money to the Foreign Country's government or any other entity in connection with this trip.

Analysis

The FCPA prohibits, *inter alia*, any domestic concern from corruptly giving or offering anything of value to any "foreign official" to assist "in obtaining or retaining business for or with, or directing any business to, any person." 15 U.S.C. § 78dd-2(a)(1). "Corruptly" means an intent or desire to wrongfully influence the recipient. Additionally, the FCPA contains an affirmative defense covering "reasonable and bona fide expenditure[s], such as travel and lodging expenses, incurred by or on behalf of a foreign official . . . directly related to . . . the promotion, demonstration, or explanation of products or services." 15 U.S.C. § 78dd-2(c)(2)(A).

The Department has issued prior FCPA Opinion Procedure Releases about sponsoring travel and related expenses for foreign officials, including two such releases relating to adoption services providers. For example, in [FCPA Opinion Release 11-01](#), the Department stated it would decline to take enforcement action if the adoption services provider sponsored expenses for a trip of foreign government officials, including international airfare to the United States, lodging, local transportation, and meals. The adoption services provider represented, among other things, that the purpose of the trip was for the foreign officials to learn more about the services offered by the adoption services provider, that expenses would be paid directly to vendors, and that no cash or other compensation would be paid to the foreign officials.

Similarly, in [FCPA Opinion Release 12-02](#), the Department stated that it would not take an enforcement action where adoption agencies intended to pay expenses for a trip by 18 government officials from a foreign country, including travel, lodging, meals, local transportation, and entertainment events of nominal cost involving families who had adopted children from the foreign country. The requesting adoption agencies represented that the purpose of the trip was to educate the foreign officials about the services provided by the adoption agencies and for the officials to meet with families who adopted children from the foreign country. They also represented that apart from the identified expenses, the adoption agencies would not compensate the officials for their visit and would not provide the officials with any stipend or spending money. The adoption agencies also represented that the costs and expenses were only those necessary and reasonable to educate the visiting officials about the operations and services of U.S. adoption service providers and that they would not pay any additional money to the foreign government or any other entity in connection with the trip.

Based on all the facts and circumstances as represented by the Requestor, and consistent with the prior FCPA Opinion Procedure Releases discussed above, the Department does not presently intend to take any enforcement action under the anti-bribery provisions of the FCPA. Among other things, based on the information provided by the Requestor, the proposed expenses reflect no corrupt intent of the Requestor and appear to be reasonable and bona fide expenses directly related to “the promotion, demonstration, or explanation of [the Requestor’s] products or services.” 15 U.S.C. § 78dd-2(c)(2)(A).

This FCPA Opinion Procedure Release has no binding application to any party other than the Requestor and can be relied on by the Requestor only to the extent that the disclosure of facts and circumstances in its Request and supplements is accurate and complete.