

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.

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:

1. it will not represent any clients before the foreign official's ministry;
2. 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;

3. 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
4. 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.

Footnotes:

1. Ordinarily 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).

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