

No. 84-02

Date: August 20, 1984

Review Procedure Releases

The Department has received a review request from an American firm which essentially seeks to transfer the assets of a foreign branch office to a foreign owned company, and then to invest in the foreign company. Foreign government regulatory approval would be required for this transaction to occur. Because of a remark by an agent of the foreign company which indicated the foreign agent's possible intent to offer a small gratuity to low-level foreign government employees to facilitate the transaction, the American firm has requested a Review Procedure Releases pursuant to 28 C.F.R. 50.18.

The requester has made the following representations, among others, concerning the alleged payments by the employee of the foreign company, and about the proposed relationship between the domestic company and the foreign company:

The employee of the foreign company has declared that no payments were ever made to officials of the foreign government. The American firm has no knowledge that any payments were actually made, and at the time of the alleged offer, employees of the American firm discouraged the payment of such gratuity.

2. The American firm, the foreign company and the foreign employee have pledged not to violate the provisions of the Foreign Corrupt Practices Act, either directly or indirectly in connection with the transactions described by the requester.

The American firm will have a minority stock interest in the foreign concern after the transfer of assets and liabilities. The firm will retain the right to have the books and records of the foreign company audited by an office or branch of a major United States accounting firm to discover whether there have been any violations of the Foreign Corrupt Practices Act. The American firm will have proportionate representation on the Board of Directors of the foreign company for so long as it shall remain a shareholder.

4. In the event that the American firm learns that the foreign company intends to violate or has violated the provisions of the Foreign Corrupt Practices Act, it has represented that it will inform the United States Department of Justice of that fact, and, in consultation with the Department will notify the responsible foreign government authorities.

The American firm has retained the right but not the obligation, to sever its relationship with the foreign company in the event that it learns of any violations of [the] Foreign Corrupt Practices Act.

Based on all the facts and circumstances as presented by the requester, the Department does not presently intend to take any enforcement action premised on the proposed business relationship.