
2014-02

November 7, 2014

Background: Requestor, a multinational consumer products company headquartered in the United States and a U.S. issuer, planned to acquire a foreign company and its wholly owned foreign subsidiary. Over the course of the pre-acquisition due diligence process, Requestor identified numerous likely improper payments by the foreign company to foreign government officials and substantial weaknesses in accounting and recordkeeping. No payments were made by or through a U.S. person or issuer. Requestor has provided a schedule to integrate foreign company into Requestor's compliance and reporting structure within one year of closing. Requestor sought an opinion on whether DOJ would take enforcement action against Requestor for the improper payments that occurred prior to the acquisition of the foreign company and its foreign subsidiary.

Decision: DOJ opined that, under the particular facts and circumstances disclosed, it would not presently intend to take any enforcement action against Requestor for the foreign company's pre-acquisition conduct. None of the suspect transactions established a discernible jurisdictional nexus to the United States. Although successor liability under the FCPA may be conferred upon a purchaser for the acquired entity's pre-existing liabilities, no liability arises in a situation in which DOJ did not previously have FCPA jurisdiction over the acquired entity. DOJ expressed no view, and Requestor did not seek an opinion, on Requestor's criminal liability for post-acquisition conduct of the foreign company or on the adequacy of Requestor's proposed integration plan.