

## Department of Justice Opinion Procedure Releases Foreign Corrupt Practices Act (FCPA)

The U.S. Department of Justice (DOJ) has procedures in place that “enable issuers and domestic concerns to obtain an opinion of the Attorney General as to whether certain specified, prospective—not hypothetical—conduct conforms with the Department’s present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1 and 78dd-2.” See 28 C.F.R. § 80.1. These opinions (Opinion Procedure Releases) are published on [DOJ’s website](#). (Pre-1993 opinions are published [here](#).)

Provided below are brief descriptions of the issues addressed in the DOJ’s Opinion Procedure Releases, along with links to those releases.

RELEASE NUMBER	ISSUE
<a href="#">80-01</a>	<b>Charitable contribution.</b> Law firm proposes to pay \$10k per year for education of adopted children of public official
<a href="#">80-02</a>	<b>Running for foreign public office.</b> Employee of Castle & Cooke subsidiary seeks permission to run for public office (part-time legislator) in foreign country while maintaining outside employment.
<a href="#">80-03</a>	<b>Consulting agreement.</b> Request to review contract with attorney in West Africa. DOJ declined review, noting that mere FCPA contractual provisions, without precautionary steps, are insufficient protection from violations if facts give rise to concern about possible FCPA violations.
<a href="#">80-04</a>	<b>Foreign official on board of foreign partner.</b> Lockheed seeks approval to enter into agreements with Saudi company for prospective business with Saudi government and Saudia Airlines. Principal of Saudi partner is on board of Saudia but has no other government position and will abstain from voting on all Lockheed-related matters.
<a href="#">81-01</a>	<b>Consulting arrangement, reimbursement for certain expenses.</b> Bechtel seeks approval for contract with SGV, an auditing, management consulting, and tax advisory firm located in the Philippines, and 10 Asian nations, and Saudi Arabia. Contract allows entertainment, meal, gift, and travel expense reimbursement consistent with local laws.
<a href="#">81-02</a>	<b>Promotional gifts to foreign officials.</b> Iowa Beef Packers want to send samples of products to officials of Soviet Ministry of Foreign Trade. Individual packages are each valued at less than \$250, with total less than \$2K. Packages provided to officials in their capacity as representatives of government agency, and government is informed.

- [82-01](#) **Conference and travel expenses to promote business.** Missouri Department of Agriculture proposes to host 10 delegates from Mexican government and private sector to promote agriculture business in Missouri. Missouri will pay for travel, meals, lodging, and entertainment, and private companies will furnish samples and host dinners.
- [82-02](#) **Finder's fee/commission.** Shoup & Co. (Pennsylvania voting machine company) has contract with Nigerian FEC and proposes to pay 1% finder's fee to Nigerian national employed by consulate in United States.
- [82-03](#) **Commission paid to government-controlled broker.** Corporation wishes to sell equipment to Yugoslavia military, and will pay a percentage of contracts to government-controlled trade organization (effectively a government-controlled arms dealer) as required by Yugoslavian law.
- [82-04](#) **Hiring foreign representative related to employee of foreign government.** Machinery company intends to pay foreign businessman used as agent for sale of a generator to a foreign country, where agent's brother is employee of foreign government.
- [83-01](#) **Foreign agent appointed by president of Sudan.** California company seeks to do business with Sudanese corporation that develops communications networks. Sudanese corporation is member of group representing several countries, and will act as agent for California company in deals with those countries. President of Sudanese corporation is appointed by president of Sudan, but corporation is operationally independent of Sudanese government.
- [83-02](#) **Travel, entertainment expenses.** U.S. company has joint venture with two foreign companies and joint venture has long-term relationship with government-controlled foreign entity. General manager of government-controlled entity is vacationing in United States with his wife, and U.S. company wants him to tour U.S. facilities, with extra expenses to be paid by U.S. company.
- [83-03](#) **Travel, entertainment expenses.** Missouri Department of Agriculture and CAPCO (private company) want to pay reasonable expenses for Singapore government official to tour Missouri sites. CAPCO manages foreign-owned properties, and while it does not presently do business with Singapore, individual officers of firm may enter into supply, services, or sales contracts with that government in future.
- [84-01](#) **Hiring foreign representative related to head of state.** U.S. firm wants to use foreign marketing representative in foreign country where principals of representative are related to head of state.

- [84-02](#) **Small payment for regulatory approval.** U.S. firm wants to transfer assets of foreign branch office to foreign-owned company, then invest (as minority investor with board seat) in new foreign company. Proposal needs foreign regulatory approval, and agent of foreign company remarked that he may pay small gratuity to low-level foreign government employee to facilitate transaction.
- [85-01](#) **Travel expenses for U.S. site visit.** ARCO foreign subsidiary will construct plant in France. ARCO wants to pay expenses for French officials to travel to United States to inspect similar plants to address their management and environmental concerns.
- [85-03](#) **Hiring foreign agent.** U.S. company wants to hire foreign agent to help identify proper agency and officials in foreign country with whom U.S. company can negotiate settlement of claim against foreign country.
- [86-01](#) **Hiring foreign legislators as representatives.** U.S. corporations want to hire members of British and Malaysian Parliaments to represent the firms in business operations in their respective countries.
- [87-01](#) **Commission/finder's fee.** Lantana (U.S. company) wants to sell military patrol boats to Milverton (British company controlled by Nigerian national), which will resell boats to Nigerian government. Lantana will be paid in full before Milverton independently negotiates with Nigerian government. Lantana paying 10% commission to international marketing firm that brought proposal to Lantana.
- [88-01](#) **Participation fees.** Mor-Flo (U.S. company) intends to acquire property in Mexico to build plant and will participate in debt-equity swaps with Mexican government to finance project. Mor-Flo paid nonrefundable participation fees to Mexican government agency (\$42k) and U.S. financial institution (\$320k) designated by Mexico as agent for transaction.
- [92-01](#) **Training and travel expenses.** Petroleum exploration company wants to enter into joint venture with ministry in Pakistan. Pakistani law requires production companies to provide training to government personnel in technical and management disciplines related to industry. Company will commit up to \$200k per year, including paying for expenses related to training in United States.
- [93-01](#) **Salaries paid to foreign directors of foreign government-owned joint venture partner.** U.S. company entered into joint venture to supply management services to a quasi-commercial entity wholly owned by government of former Eastern bloc country. Foreign partner provided financing while U.S. partner supplied services to board members of entity. Foreign directors will be paid \$1K per month to approximate their salaries from foreign partner. The fees will be reimbursed by foreign partner out of its share of profits.

- [93-02](#) **Commission to government-owned business.** U.S. company seeks to enter into sales agreement with foreign government-owned business that holds exclusive license to supply equipment to country's military. Country's laws require that its military deal only through that government-owned business, and supplier must be paid percentage of all total contracts. U.S. company proposes to pay commissions directly to country's treasury rather than to business or its officials.
- [94-01](#) **Consulting agreement.** U.S. company entering into consulting agreement with foreign national who is general director of foreign state-owned enterprise from which U.S. company had bought property. Consultant will be paid \$20k over one year for assistance in obtaining consents and governmental approvals for accessing rights of way and submitting application to local power authority to connect to power grid.
- [95-01](#) **Charitable donation.** U.S. energy company plans to acquire and operate plant in South Asia where there is no modern medical facility. A new medical facility is under construction, costing hundreds of millions of dollars. If acquisition is completed, U.S. company plans to donate \$10 million through a U.S. charity to a public LLC in the foreign country. Medical facility will be open to public, including U.S. company employees.
- [95-02](#) **Payments for services and offset credits.** U.S. company "A" has offset obligations resulting from contract with foreign government. Offset agreements are negotiated with Offset office, which is part of foreign Ministry of Defense. U.S. company "B" is to receive millions of dollars for establishing a new company ("Newco"), majority owned by foreigners, to generate and sell offsets. "A" will pay "B" for offsets.
- [96-01](#) **Training courses and travel expenses.** Nonprofit corporation proposes to sponsor and provide funding for foreign government representatives to attend training courses regarding dangers of environmental accidents in their region. Nonprofit/nongovernmental organization will pay \$10-15k per year for travel, lodging, and expenses to attend training.
- [96-02](#) **Commission to government-owned broker.** U.S. defense company wants to renew marketing agreement with foreign state-owned enterprise, which will serve as exclusive sales representative and be paid commission for sales.
- [97-01](#) **Commission to representative in connection with sales to government-owned entity.** In connection with bid to foreign government-owned entity to sell and service high-technology equipment, U.S. company enters into representative agreement with privately owned company (no officials) in foreign country.

- [97-02](#) **Charitable donation.** U.S. utility constructing plant in Asia where primary-level education is lacking. School construction is proposed for area, costing \$100k or more. Utility wants to donate \$100k directly to government entity responsible for construction.
- [98-01](#) **Payment to government officials as part of required environmental cleanup.** U.S. industrial company held liable by Nigeria for environmental cleanup wants to hire Nigerian cleanup contractor to resolve liability. Contractor was recommended by Nigerian EPA. After paying \$50k fine, \$30k of \$170k cleanup costs would be paid to Nigerian officials. [DOJ said it would initiate an investigation under proposed scenario.]
- [98-02](#) **Fees to representative in connection with sales to government-owned entity and settlement to terminate unlawful agreement.** U.S. company submitting bid to foreign government-owned entity to sell and service military training program. As part of bid, U.S. company would enter into consulting agreements with privately held representative in foreign country. U.S. company also proposes to pay settlement fee at arm's-length rate to terminate former representative agreement of acquired company that violated local law.
- [00-01](#) **Severance payment to partner appointed to foreign government post.** A foreign partner of U.S. law firm appointed to high-ranking position in foreign government. Foreign partner will take leave of absence, but firm proposes paying insurance while in office, and paying a lump sum for client business, along with guarantee of return to partnership when he leaves public office.
- [01-01](#) **Acquisition of pre-FCPA contracts involving foreign officials.** U.S. company seeks to enter into 50-50 joint venture with French company, which will contribute contracts procured before enactment of French FCPA.
- [01-02](#) **Foreign official partner in joint venture.** U.S. and foreign companies to form consortium to bid on business with foreign government. Chairman and shareholder of foreign company acts as advisor to foreign government officials and is a senior public education official.
- [01-03](#) **Continuing business with foreign dealer after investigation did not substantiate FCPA concerns.** U.S. company, with assistance from foreign dealer, submitted bid for sale of equipment to foreign government. Following submission, U.S. company employee heard that dealer may have bribed foreign officials to approve bid. Investigation turned up no evidence.
- [03-01](#) **Due diligence uncovers bribes.** U.S. issuer intends to purchase stock of U.S. company "A" that has foreign subsidiary. Due diligence discloses that officers of foreign subsidiary paid bribes. Issuer and company "A" discloses to DOJ and SEC.
- [04-01](#) **Conference and travel expenses.** U.S. law firm proposes to sponsor comparative law seminar with Chinese ministry, paying expenses for Chinese officials to travel to Beijing.

- [04-02](#) ***Due diligence for acquisition post-guilty plea.*** U.S. investors acquiring ABB Ltd.'s upstream petrochemical business. ABB previously pleaded guilty to FCPA violations.
- [04-03](#) ***Conference and travel expenses.*** U.S. law firm proposes to sponsor trip to United States for Chinese ministry officials to meet with U.S. public-sector officials to discuss U.S. labor law.
- [04-04](#) ***Conference and travel expenses.*** U.S. company proposes to fund a "study tour" by foreign officials who are members of a committee drafting a new law on mutual insurance.
- [06-01](#) ***Contribution for foreign anticounterfeiting enforcement initiative.*** U.S. company seeks to contribute \$25k to Customs Department of Finance Ministry in African country as part of pilot project to improve local enforcement of anticounterfeiting laws. Money will be used to fund incentive awards to local customs officials to improve enforcement.
- [06-02](#) ***Hiring foreign law firm to assist in applications before foreign agency.*** U.S. issuer subsidiary in foreign country seeks to retain foreign law firm to assist in preparing foreign exchange applications and represent company before a foreign government agency. Firm will pay "substantial," though reasonable, commission and flat rate. Evidence suggests that, without assistance, applications are being denied for minor, pretextual reasons.
- [07-01](#) ***Conference and travel expenses to promote business.*** U.S. issuer proposes to pay expenses for six-person delegation from Asian country for promotional tour of U.S. issuer's facilities, designed to bolster the issuer's "business credibility." U.S. issuer wants to gain business in the foreign country.
- [07-02](#) ***Conference and travel expenses to promote business.*** U.S. insurance company wants to pay expenses for six junior- to mid-level foreign government officials for educational/internship program at U.S. company's headquarters.
- [07-03](#) ***Expense for foreign court-appointed administrator.*** U.S. resident involved in foreign court estate proceedings was directed by foreign court to prepay expenses of court-appointed administrator. Requestor obtained legal opinion that payment is lawful under the foreign country's written laws, and the payment will be made to the court clerk's office, not to the individual presiding judge.
- [08-01](#) ***Due diligence and paying premium for acquisition of foreign government-owned interests.*** A U.S. company bid for a majority investment in a foreign government-owned company that manages public services for a major foreign municipality. The U.S. company's bid reflected a significant premium to acquire a majority stake. The U.S. company conducted extensive due diligence and required public disclosures to foreign government.

- [08-02](#) ***Due diligence and amnesty for pre- and post-acquisition FCPA violations.*** DOJ approves framework for U.S. acquirer to seek amnesty for target's FCPA violations where, as a result of foreign law restrictions on pre-acquisition due diligence, acquiring company is unable to complete due diligence review until after acquisition is completed.
- [08-03](#) ***Paying promotional expenses to journalists in China.*** U.S. membership organization specializing in anti-bribery training, compliance, and due diligence seeks approval to pay expenses for journalists employed by state-owned media outlets to attend press conference to promote anti-corruption conference and new anti-corruption initiative. DOJ approves reasonable payments under promotional expenses affirmative defense.
- [09-01](#) ***Charitable donation to foreign government.*** Medical device maker wants to introduce product to foreign government by donating samples (valued at \$1.9 million) to government health centers. Using objective criteria, government will conduct technical evaluation, which is required to earn government endorsement to sell products eligible to participate in government-subsidized medical device program. Government does not promote any particular manufacturer's products; program is open to all major manufacturers with government endorsement.
- [10-01](#) ***Hiring qualified foreign official as required by contract.*** U.S. company's contract with foreign government agency to perform work in the foreign country requires U.S. company to hire and compensate certain foreign individuals, at least one of whom would qualify as a "foreign official" as defined by the FCPA. A U.S. government agency is involved in the contract and has directed the U.S. company to hire the individual. The U.S. company did not select the individual. The individual, who is qualified for the position, will be paid \$5,000 per month for one year. The individual will not make any decisions affecting the U.S. company, including procurement or contracting decisions.
- [10-02](#) ***Microfinance Institution making grant as directed by foreign government.*** A U.S. non-profit microfinance institution (MFI) that provides loans to world's lowest-income entrepreneurs has a subsidiary in a Eurasian country that wishes to transform itself into a more bank-like institution. To do so, the Eurasian country's government is requiring the subsidiary to make a grant of 33% of its capital to one or more local MFIs on that belong to the local MFI Association. The Eurasian subsidiary conducted extensive due diligence and identified one local MFI that the due diligence did not identify information of potential corruption. The subsidiary will also implement controls on the grant including the staggered payment of grant funds, ongoing monitoring and auditing, the earmarking of funds for capacity-building, a prohibition on the compensation of board members, and the institution of an anti-corruption compliance program. The DOJ stated that it appeared unlikely that the payment will result in the corrupt giving of anything of value to foreign officials.
- [10-03](#) ***Retention of consultant who represents foreign government in other matters.*** U.S. limited partnership plans to hire consultant (a partnership) and owner of consultant with extensive contacts in the business community and the government in a foreign country in which the U.S. partnership wishes to do

business. The consultant is a registered agent of the foreign government pursuant to the Foreign Agents Registration Act. The consultant will be paid a signing bonus upon signing a contract, and will receive success fees if a contract is negotiated. DOJ states that in this situation, the consultant and its owner would not qualify as foreign officials with respect to the U.S. partnership's proposed contract. The DOJ cited the steps taken to wall off other employees of the consultant, the full disclosure of the relationship to the relevant parties, the permissibility of the relationships under local law, and the contractual obligations to limit further representation of the foreign government by the consultant.