

**DOJ RELEASES TWO OPINIONS ON HOSTING FOREIGN OFFICIALS
UNDER THE FOREIGN CORRUPT PRACTICES ACT**

The United States Department of Justice (“DOJ” or “Department”) has recently issued two new opinion procedure releases regarding the hosting of foreign officials under the Foreign Corrupt Practices Act (“FCPA” or the “Act”).

Under the FCPA, DOJ has established a procedure for providing advisory opinions on potential FCPA issues. Anyone contemplating a transaction implicating potential FCPA concerns may present the facts to DOJ and request DOJ’s views on whether the specified transaction “would, for purposes of the Department of Justice’s present enforcement policy, violate the [Act].” A favorable response from the Department establishes a rebuttable presumption that the transaction is lawful.

In Opinion Procedure Release No. 07-01,¹ issued July 24, 2007, the requestor proposed a four-day educational and promotional tour of one of its U.S. operations sites by a six-person delegation comprised of government officials of an Asian country. The requestor indicated that the purpose of the visit was to familiarize the delegates with the nature and extent of the requestor’s operations and capabilities and to help establish the requestor’s business credibility. The requestor intended to pay for the officials’ domestic economy-class travel to one of the requestor’s U.S. operations sites, domestic lodging, local transport, and meals for the six officials. The foreign government would pay the costs of the international airfare.

In Opinion Procedure Release No. 07-02,² issued September 11, 2007, the requestor proposed to pay certain domestic expenses for approximately six junior to mid-level foreign government officials who were traveling to the United States to attend a six-week internship program for foreign insurance regulators sponsored by the National Association of Insurance Commissioners (the “NAIC”). After the conclusion of the NAIC program, the requestor wished to host the foreign officials for a five-day educational program at its U.S. headquarters. The requestor stated that the purpose of the visit was to familiarize the officials with the operations of a United States insurance company. The requestor intended to pay for domestic economy-class air travel to its U.S. headquarters, domestic lodging, local transportation, meals and a set amount of incidental expenses, and a modest four-hour city sightseeing tour for the six officials.

In each of these Opinion Procedure releases, the Department stated that it did not presently intend to take any enforcement action. The Department found that the expenses contemplated were reasonable under the circumstances and directly related to “the promotion, demonstration, or explanation of [the requestor’s] products or services,” and were therefore consistent with the FCPA’s promotional expenses affirmative defense, as set forth in 15 U.S.C. §§ 78dd-1(c)(2)(A) and 78dd-2(c)(2)(A).

¹ Available at <<http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2007/0701.html>>

² Available at <<http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2007/0702.html>>

The Department looked to a number of factors in reaching these conclusions, which were largely the same for both requestors. In No. 07-01, the requestor did not currently conduct operations in the foreign country or with the foreign government at issue, and asserted that the proposed delegates had no direct authority over decisions relating to potential contracts or licenses necessary for operating in the foreign country. In No. 07-02, the requestor conducted only routine business with the foreign government agency, which was guided by administrative rules with identified standards. Such business consisted primarily of reporting operational statistics, reviewing the qualifications of additional agents, and conducting onsite inspections of operations. The requestor's only work with other entities within the foreign government consisted of collaboration on insurance-related research, studies, and training.

In both instances, the participants in the trips would be selected solely by the foreign government, not the requestor. Both requestors would host only officials working for the relevant foreign ministries, not spouses or other guests. They would not pay any expenses related to the foreign officials' travel to or from the United States. The requestors would pay all costs directly to the service providers, or reimburse a modest daily amount if necessary, upon presentation of a written receipt. The expenses other than travel would consist only of meals and receptions connected to meetings, speakers, or events planned by the requestor for the officials, and would not include any entertainment or leisure activities for the officials, other than the modest, half-day sightseeing tour, or any stipend or spending money. Any souvenirs provided by the requestor would reflect the requestor's name or logo and would be of nominal value.

Further, in No. 07-01, the requestor obtained written assurance from an established law firm with offices in both the U.S. and the foreign country that the requestor's sponsorship of the visit and its payment of the expenses described in the request were not contrary to the law of the foreign country. It stated that all costs and expenses incurred by the requestor in connection with the visit would be properly and accurately recorded in the requestor's books and records.

These releases are noteworthy in at least two respects. First, they provide helpful guidance on what will clearly constitute acceptable expenditures under the FCPA for travel and lodging provided to foreign officials under the Act's promotional expenses affirmative defense. Second, DOJ's explicit identification of certain expenditures that were *not* present in these approved requests — such as hosting spouses or family members, payment of cash *per diems*, gifts with significant intrinsic value going beyond nominal, promotional materials, and expensive or extensive leisure activities — reinforces these elements as risk areas when paying travel expenses for foreign government officials. Companies planning to pay for foreign government official travel should be particularly mindful of these risk areas in designing or approving such arrangements.

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