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## Opinion Procedure Release 07-01

No.: 07-01

Date: July 24, 2007

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department has reviewed the FCPA Opinion request of a U.S. company (the "requestor") that was submitted on June 29, 2007. The company is both an "issuer" and a "domestic concern" within meaning of the FCPA.

The requestor proposes to cover the domestic expenses for a trip to the United States by a six-person delegation of the government of an Asian country for an educational and promotional tour of one of the requestor's U.S. operations sites. The stated purpose of the visit is 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 is interested in participating in future operations in the foreign country similar to those it conducts in the U.S. The visit will last for four days and will be limited to domestic economy class travel to one U.S. operations site only. The requestor also intends to pay for the domestic lodging, local transport, and meals for the six officials. The foreign government plans to pay the costs of the international airfare. The requestor has asked for a determination of the Department's present enforcement intention under the FCPA.

The requestor has represented, among other things, that:

- it does not currently conduct operations in the foreign country or with the foreign government, although it is interested in pursuing such opportunities in the future;
- it has obtained written assurance, a copy of which has been provided to the Department of Justice, 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 is not contrary to the law of the foreign country;
- it did not select the delegates who will participate in the visit; rather, the foreign government selected the delegates;
- to the requestor's knowledge, the delegates have no direct authority over decisions relating to potential contracts or licenses necessary for operating in the foreign

- country;
- it will host only officials working for the relevant foreign ministries and one private government consultant;
- it intends to pay all costs directly to the providers; no funds will be paid directly to the foreign government or the delegates;
- it will not pay any expenses for spouses, family, or other guests of the officials;
- any souvenirs that the requestor may provide to the delegates would reflect the requestor's name and/or logo and would be of nominal value;
- apart from meals and receptions connected to meetings, speakers, or events the requestor is planning for the officials, it will not fund, organize, or host any entertainment or leisure activities for the officials, nor will it provide the officials with any stipend or spending money; and
- all costs and expenses incurred by the requestor in connection with the visit will be properly and accurately recorded in the requestor's books and records.

Based upon all of the facts and circumstances, as represented by the requestor, the Department does not presently intend to take any enforcement action with respect to the proposal described in this request. This is because, based on the requestor's representations, consistent with the FCPA's promotional expenses affirmative defense, the expenses contemplated are reasonable under the circumstances and directly relate to "the promotion, demonstration, or explanation of [the requestor's] products or services." 15 U.S.C. §§ 78dd-1(c)(2)(A) and 78dd-2(c)(2)(A).

The FCPA Opinion Letter referred to herein, and this release, have no binding application to any party which did not join in the request, and can be relied upon by the requestor only to the extent that the disclosure of facts and circumstances in its request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

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