

My Partner Left Me For The Government! DOJ's First Opinion Procedure Release Of 2014 Approves Buyout Of Minority Shareholder-Turned-Government Official

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On March 17, 2014, the Department of Justice issued [FCPA Opinion Procedure Release 14-01](#), in which it approved a U.S. issuer's buyout of a minority partner-turned-government-official's interest in a foreign company. In this case, the U.S. issuer was the majority shareholder in a foreign financial services company. The minority shareholder was a foreign businessman. The issuer and businessman had a contract that governed the procedure for the issuer's buyout of the businessman's interests in the event the businessman was appointed to a foreign government position. The business ultimately did take a position with the foreign jurisdiction's central monetary and banking agency, which was a long-time client of the issuer. The issuer paid the businessman his bonus, severance, and benefits per the parties' contract, but ran into trouble with respect to the contractual calculation of his shares in the company, which, if left unaltered, would have left his shares with no value. In an effort to resolve the issue in good faith, the issuer engaged an accounting firm to make an independent and binding assessment of the value of the businessman's shares. Meanwhile, the businessman-turned-official recused himself from any decision concerning the award of business to the issuer or its affiliates by the agency. The issuer then sought the DOJ's opinion that it would not initiate any enforcement action under the FCPA. Citing a lack of corrupt intent, the DOJ confirmed that it would not bring an enforcement action. Specifically, the DOJ cited the use of an independent and binding assessment by a third party; the issuer's representations that it had not paid the businessman anything other than his bonus, severance and benefits; the disclosure of the businessman's ownership interest to the appropriate authorities in the foreign jurisdiction; the issuer's education of its senior employees that they were not to involve the businessman in any ongoing business with the foreign agency; and the businessman's representations that he has recused himself and will continue to recuse himself from any matters relating to the issuer. As additional support for its finding, the DOJ cited a prior release, [Opinion Procedure Release 00-01](#), which involved a law firm partner's leave of absence from the firm to take a high-ranking position in the government of a foreign county. The DOJ did

note that “this Opinion does not foreclose future enforcement action should facts indicative of corrupt intent (such as an implied understanding that Foreign Shareholder would direct business to Requestor or inflated earnings projections being used to induce Foreign Shareholder to act on Requestor’s behalf) later became known.” The takeaway from this release is more in the request than in the result; companies must be aware that the FCPA could be applied to impose liability on a U.S. company that pays benefits or a buyout to a foreign official, whether pursuant to contract or otherwise. If a buyout or other payment outside of a contract becomes necessary, the company must be extremely careful. A lack of transparency, failure to apprise a foreign agency, or failure by the official to recuse himself or herself from certain business decisions could warrant DOJ action under the FCPA.