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DOJ Opinion OKs Payment to Third Party



On August 14, 2020, the U.S. Department of Justice ("DOJ") issued an opinion letter (cataloged as [FCPA Opinion No. 20-01](#)) stating that it did not intend to take enforcement action under the Foreign Corrupt Practices Act ("FCPA") against a U.S.-based investment advisor planning to pay something akin to a "finder's fee" to a foreign state-owned investment bank (the "third party") who helped facilitate a transaction.

This opinion marks the first time in six years that the DOJ has issued guidance under the [FCPA Opinion Procedure Regulations](#), a process by which companies can request the DOJ's formal opinion as to whether certain conduct conforms with its FCPA anti-bribery enforcement policies. In issuing its opinion, the DOJ looked past some possible red flags related to this contemplated payment and relied upon the following: the investment advisor planned to make a payment directly to the third party, which was an entity versus an individual (on its face, the FCPA only prohibits payments to individuals); there was no indication that the payment was intended to corruptly influence a foreign official; the investment advisor received legitimate services from the third party; and the chief compliance officer of the third party certified that the planned payment was commensurate with the service it had provided and was otherwise commercially reasonable. Our detailed analysis of this opinion is available [here](#).

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