

Kluwer Arbitration Blog

U.S. Department of Justice says that arbitration lawyer can pay medical costs of foreign gov't official's daughter without fearing Foreign Corrupt Practices Act prosecution

Luke Eric Peterson (Investment Arbitration Reporter) · Saturday, December 28th, 2013

By Luke Eric Peterson

There's perennial discussion in the arbitration world as to the definition and legal implications of corruption in the context of international arbitration – including for example in [a recent investment case involving Uzbekistan](#) – but it's less common to see discussions of corruption in the context of relations between arbitration lawyers and their governmental clients.

However, the U.S. Department of Justice (DOJ) has recently issued an “opinion letter” at the request of an unnamed U.S.-based arbitration lawyer, offering a view as to whether payment by that individual of the medical expenses of a foreign government official's daughter would place the attorney at risk of prosecution under a U.S. law governing bribery and corruption of foreign government officials.

The December 19, 2013 opinion letter had been requested by a partner with a U.S. law firm (“the requestor”), so as to clarify whether payment of the medical expenses – which could run between 13,500 to 20,500 USD – might violate the Foreign Corrupt Practices Act (FCPA).

After reviewing the request, the U.S. DOJ signaled in the Dec 19, 2013 opinion that it does “not presently intend to take any enforcement action with respect to the proposed payment.”

As is discussed below, the proposed payments were viewed as devoid of corrupt intent; characterized by transparency; governed by important safeguards; and not likely in violation of the local law of the foreign country.

Payment cast as “humanitarian”, and DOJ takes comfort from various facts

The DOJ cautioned that payments or gifts to a foreign official's family member can run afoul of the FCPA, however on the facts put forward by the requestor, the DOJ was persuaded that there was a lack of corrupt intent on the part of the US lawyer. There were also “adequate assurances” that the proposed payment would “have no impact on Requestor's or Requestor's Law Firm's present or future business with Foreign Country A”.

The US lawyer had informed the DOJ that he had become a personal friend of the foreign official

in question, and that the latter individual worked in an unnamed foreign country's Office of the Attorney General (OAG). That office is responsible for engaging international law firms, however the request for an opinion stressed that the foreign official "has not had and will not have in the future any role in the selection of Requestor or the Law Firm as counsel for (the foreign country)."

Lawyer and firm currently represents government in two unnamed international arbitrations, but attorney professes not to be lead/primary contact

The request clarified that the law firm partner, and colleagues at the firm, presently represents the foreign government in two international arbitrations, and expect to be engaged for another matter shortly. It was disclosed that the firm had billed the foreign country for more than \$2 million USD over the last 18 months, and expects to charge at least that much in 2014.

The attorney stressed that he/she was not the Law Firm's "primary relationship attorney," "originating attorney," or "lead attorney" *vis a vis* the foreign government. However, the U.S.-based lawyer disclosed that he/she "has participated in the selection or pitch processes for new business with (that country) ... and would expect to do so with regard to future business from these clients."

Other mitigating factors and safeguards

The request clarified that the proposed payments would be made out of the lawyer's personal funds directly to the medical facility in a third-country, rather than disbursed to the foreign government official.

It was also noted that the proposed payment had been cleared with the U.S. lawyer's law firm and the foreign government. Indeed, the Attorney-General of the foreign country had provided a letter representing that the proposed payments would not violate that country's own corruption laws, and that the "... decision by Requestor to pay for or not to pay for this medical treatment will have no impact on any current or future decisions of the OAG in deciding on the hiring of international legal counsel."

The Attorney-General, and the relevant foreign official, both represented that the foreign official works on arbitration cases, but does not have a role in selecting law firms for the country.

In view of all the factors of the case, the DOJ determined that the facts revealed "... an absence of corrupt intent and provide adequate assurances that the proposed benefit to Foreign Official's daughter will have no impact on Requestor's or Requestor's Law Firm's present or future business with Foreign Country A."

As such, the DOJ signaled that it did not presently intend to take any enforcement action in relation to the proposed payment.

A copy of the opinion has been posted online [here](#).

According to the FCPA Blog, a website devoted to FCPA matters, the opinion is the first one issued in 2013.

Luke Eric Peterson is the Editor of [InvestmentArbitrationReporter.com](#), a news and analysis service focused on investor-state arbitration claims. In addition, he has written occasionally for

the KluwerArbitration Blog since its inception.


To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).


Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



 Wolters Kluwer

The graphic features a black background with white text and a circular icon. The icon depicts a magnifying glass over a group of stylized human figures, representing a search or investigation process. The text is arranged in a clean, modern layout with a horizontal line above the main heading.

This entry was posted on Saturday, December 28th, 2013 at 6:03 pm and is filed under [Corruption, International arbitration](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.