



U.S. Department of Justice

National Security Division

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Counterintelligence and Export Control Section

Washington, DC 20530

February 14, 2023

**Via E-mail to** [Redacted]

[Name Redacted]

[Address Redacted]

Re: Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Redacted]:

We write in response to your letter of January 10, 2023 (the “January 10 Letter”) requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) and inquiring whether you have an obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), for work you are planning to perform under an agreement made directly or indirectly with [Foreign Company]. Based on the representations made in the January 10 Letter, and for the reasons more fully stated herein, we have concluded that neither you nor your [U.S. Company] are obligated to register under the Act at this time, because the activities described in the January 10 Letter are private, nonpolitical, commercial activities which qualify for the exemption set out in Section 613(d)(1) of the Act.<sup>1</sup>

**Background**

According to the January 10 Letter, [Foreign Company] is [Redacted] in [Foreign Country]; [Foreign Company] is owned by [Government of Foreign Country]; and [Foreign Company’s] strategy is closely aligned with [Government of Foreign Country’s] programs [Redacted].

The January 10 Letter states that you are discussing [Redacted] in a proposed written contract with [Foreign Company]. At the present time you do not know whether the contract will be directly between [U.S. Company] and [Foreign Company] or whether [U.S. Company] will be a subcontractor to [Unrelated U.S. Company].

According to the January 10 Letter, the services that you would deliver to [Foreign Company] would include [Redacted] training in effective executive communications [Redacted] (collectively, the “[Redacted] Services”).

The January 10 Letter further states that you will perform the [Redacted] Services in the United States and that they will be delivered to the [Foreign Company] remotely via [Redacted]. [Foreign Company] does not have an office in the United States [Redacted].

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<sup>1</sup> 22 U.S.C. § 613(d)(1).

## **FARA Analysis**

As you may be aware, a person is an “agent of a foreign principal” and must register under FARA if such person acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and engages in one of the enumerated activities triggering registration.<sup>2</sup>

The term “foreign principal” is defined by FARA to include “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”<sup>3</sup> Based on the description in the January 10 Letter, [Foreign Company] has its principal place of business in [Foreign Country]. [Foreign Company] therefore constitutes a “foreign principal” for purposes of the Act.

As described above, you are contemplating a contract with [Foreign Company] to perform the [Redacted] Services. Pursuant to the contract, you will be acting “at the order, request, or under the direction or control” of [Foreign Company], which is a foreign principal for purposes of the Act. Absent an applicable exemption, you will therefore be acting as an agent of a foreign principal for purposes of the Act and thus subject to its registration requirements.

The foregoing analysis will not change if, for purposes of delivering the [Redacted] Services, [U.S. Company] does not contract directly with [Foreign Company] but is instead a subcontractor to [Unrelated U.S. Company]. In that case, [U.S. Company] would still qualify as an agent of a foreign principal because, as a subcontractor, it would be acting “at the order, request, or under the direction or control” of “a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,” *i.e.*, [Unrelated U.S. Company] serving as the prime contractor to [Foreign Company].<sup>4</sup>

The January 10 Letter suggests that you would qualify as an agent of a foreign principal because you are acting as a “public relations counsel” as defined in the Act, and we agree with that conclusion. The Act defines a “public relations counsel” to include, in relevant part, “any person who engages directly or indirectly in informing [or] advising . . . a principal in any public relations matter pertaining to . . . public interests, policies, or relations of such principal.”<sup>5</sup>

The January 10 letter stresses that in the course of performing the [Redacted] Services, you would [Redacted]. We question whether it would be possible to provide the [Redacted] Services entirely in the abstract, or whether effective delivery of the [Redacted] Services may require you to demonstrate how [Redacted] applies in particular contexts relevant to [Foreign Company]’s business. In the latter case, you may be informing or advising the [Foreign Company] in “public relations matter[s] pertaining to [Foreign Company]’s public interests, policies, or relations,” thus

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<sup>2</sup> See 22 U.S.C. § 611(c)(1).

<sup>3</sup> 22 U.S.C. § 611(b)(3).

<sup>4</sup> See 22 U.S.C. § 611(c)(1).

<sup>5</sup> See 22 U.S.C. § 611(g).

falling within the Act's definition of a "public relations counsel."

Although the [Redacted] Services will be delivered remotely to [Foreign Company] via [Redacted], the January 10 Letter states that they will originate with you in the United States. Under the above analysis, you would therefore be "act[ing] within the United States as a public relations counsel."<sup>6</sup> [Redacted].

The January 10 Letter asks whether the [Redacted] Services would fall within FARA's "commercial exemption."<sup>7</sup> Section 613(d) of FARA provides, in relevant part, that an agent of a foreign principal may be exempt from FARA's registration requirements if it engages "*only* (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or, (2) in other activities not serving predominantly a foreign interest" (emphasis added).<sup>8</sup> With respect to the first part of the exemption, the FARA Regulations further provide, "As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind" (emphasis in the original).<sup>9</sup>

As the [Redacted] Services are intended to improve the [Redacted] of the [Foreign Company], we believe they constitute private and nonpolitical activities in furtherance of [Foreign Company]'s bona fide commercial [Redacted] activities and therefore qualify for the exemption from FARA registration set forth in Section 613(d)(1) of the Act.

We also note, however, that the January 10 letter describes [Foreign Company] as [Redacted] owned by [Government of Foreign Country]. We must caution you that for the Section 613(d)(1) exemption to continue to apply, the agent of the foreign principal must *only* engage in private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal. Other, political activities could be "serving predominantly a foreign interest" and not entitled to the exemption.<sup>10</sup> The FARA Regulations also provide that "[f]or the purpose of section 3(d) of the Act, activities of an agent of a foreign principal in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered 'private,' even though the foreign principal is owned or controlled by a foreign government, *so long as the activities do not directly promote the public or political interests of the foreign government*" (emphasis added).<sup>11</sup> Likewise,

For the purpose of section 3(d)(2) of the Act, a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, *so long as the political activities are not directed by a foreign government and the political activities do not directly*

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<sup>6</sup> See 22 U.S.C. § 611(c)(1)(ii).

<sup>7</sup> *Id.* at 3.

<sup>8</sup> 22 U.S.C. § 613(d).

<sup>9</sup> 28 C.F.R. § 5.304(a).

<sup>10</sup> See 22 U.S.C. § 613(d)(2).

<sup>11</sup> 28 C.F.R. § 5.304(b).

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*promote the public or political interests of a foreign government or of a foreign political party* (emphasis added).<sup>12</sup>

In order for the Section 613(d)(1) exemption to continue to apply to the [Redacted] Services, you must not engage in political activities that directly promote the public or political interests of the [Government of Foreign Country]. Please also keep in mind the requirements of § 5.300 of the FARA Regulations: “The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.”<sup>13</sup>

Please note that any change in the facts and circumstances you relayed to us may change your status and you could be required to register. If any such change does occur, you should contact us immediately. The present advisory opinion is expressly limited to the facts and conclusions stated herein.

While your January 10 Letter also asked for an advisory opinion on a possible [Redacted] contract that might include [Redacted], we cannot opine on hypothetical future activities.<sup>14</sup> You may contact the FARA Unit at a later date to request a separate advisory opinion if and when such activities become real.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

*/s/ Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit

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<sup>12</sup> 28 C.F.R. § 5.304(c).

<sup>13</sup> 28 C.F.R. § 5.300.

<sup>14</sup> See 28 C.F.R. § 5.2(b).