



**U.S. Department of Justice**

National Security Division

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Counterintelligence and Export Control Section

Washington, DC 20530

April 6, 2023

**By Email**

[Requestor]

[Address]

[email address]

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

Dear [Requestor]:

We write in response to your letter of February 20, 2023 (“February 20 Letter”),<sup>1</sup> in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), as to 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 will perform under an agreement you have entered into with [foreign organization] an investment promotion office of the Government of [foreign country]. Based on the representations made in the February 20 Letter, we assess that you will be obligated to register under FARA.

According to your submission, on February 17, 2023, [foreign government agency] extended an offer for your appointment as a Strategic Advisor for [foreign organization] on a pro-bono basis for a period of six months. [Foreign organization] is described in this appointment offer letter as the investment promotion office of the Government of [foreign country], whose primary objective is to attract new foreign direct investment and assist current investors to expand their activities in [foreign country]. Your instructions make clear that you are serving under the direction and control of [foreign organization]. In addition, your appointment letter represents that [foreign organization] advisors are guided by the laws and regulations of [foreign country]. The appointment instruments specify that your duties include the following:

- (1) participation in establishing communication and creating a basis for cooperation between [foreign organization] and foreign and [foreign country] investors, international organizations, etc.;
- (2) participation in execution of information and communication events aimed at promoting the investment potential of [foreign country];
- (3) participation in the carrying out of measures aimed at attracting

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<sup>1</sup> This letter was received by the FARA Unit on March 6, 2023.

investment into the economy of [foreign country], providing conditions for the implementation of investment projects in [foreign country], improving the investment climate of [foreign country]; and

- (4) performance of other tasks and duties agreed between Advisor and the Executive Director of “[Foreign Organization]”.

In the February 20 Letter, you inquired whether the above-described conduct would qualify for the exemption pursuant to Section 613(d) for bona fide trade and commercial activities.

FARA is a disclosure statute which, absent specific exemptions, requires registration of agents of foreign principals who are engaged in “political activities” or other specified activities under the Act. The term “foreign principal” is defined under the Act to include “a government of a foreign country.” 22 U.S.C. § 611(b)(1). Based on the facts provided, we first note that [foreign organization], an agency of the Government of [foreign country] and a party to the agreement, qualifies as a foreign principal under FARA.

Under the Act, an “agent of a foreign principal” is defined as:

- (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other 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—
  - (i) engages within the United States in political activities for or in the interests of such foreign principal;
  - (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
  - (iii) within the United States solicits, collects, disburses, or dispenses contribution, loans, money, or other things of value for or in the interest of such foreign principal; or
  - (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

22 U.S.C. § 611(c)(1).

As detailed below, and notwithstanding the disclaimer in your Application with [foreign organization], your activities on behalf of [foreign organization] qualify you as agent of the Government of [foreign country] under the Act. Moreover, and again contrary to the disclaimer in your Application, your activities do not fall within the exemption in Section 613(d). As a result, your agreement with [foreign organization] requires you to register under FARA.

As a threshold matter, your submission establishes that you agreed in your signed agreement with [foreign organization] to “conduct [your] tasks and duties solely on the basis of the relevant decision of the Executive Director of the “[Foreign Organization],” which is part of the Government of [foreign country]. We thus find that you will be acting at the “direction or control” of [foreign organization] because FARA’s implementing regulations provide that “the term control or any of its variants shall be deemed to include the exercise of the power, directly or indirectly, to determine the policies or the activities of a person . . . by contract, or otherwise.” 28 C.F.R. § 5.100(b). Your written agreement with [foreign organization] is evidence of such agency.

You represent in your letter that your “role will relate to the bona fide trade and commerce of [foreign country] and [you] will not be expected to perform any of the following activities:

- engage in political activities in the US that directly promote the public or political interests of [foreign country]
- act in the US as a public relations counsel, publicity agent, information services employee or political consultant for [foreign country] or [foreign organization]
- solicit or collect loans, money or other things of value in the United States for [foreign organization] or
- represent [foreign organization] or [foreign government] before any agency or official of the US government.”<sup>2</sup>

FARA defines “political activities” as any activity that the person engaging in believes will, or that the person intends to, in any way influence . . . any section of the public within the United States . . . with reference to the political or public interests, policies, or relations of a government of a foreign country or of a foreign political party.” 22 U.S.C. § 611(o). We have determined that your activities on behalf of [foreign organization] in soliciting investments from persons or entities in the United States for [foreign country] are clearly in the public interests of [foreign country], and thus are “political activities” under the Act.<sup>3</sup>

Further, your submission reveals that notwithstanding the representation in your contract that you will not be expected to act as a publicity agent, the activities contemplated under your contract would qualify you as a publicity agent for [foreign organization], as defined by the Act. FARA defines a “publicity agent” to include “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of

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<sup>2</sup> This type of statement in a contract or other agreement is not dispositive of whether there is an obligation to register under FARA.

<sup>3</sup> See Adv. Op., July 19, 1988 (“promoting economic investments in the [foreign local jurisdiction] is considered ‘political activity’ as that term is defined in Section 1(o) of the Act”), available at <https://www.justice.gov/nsd-fara/page/file/1046161/download>.

any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise[.]”<sup>4</sup> Your contract with [foreign organization] states that you will be “participating in the execution of information and communication events aimed at promoting the investment potential of [foreign country]” for [foreign organization], and therefore the government of [foreign country]. This conduct qualifies you as a publicity agent under Section 611(c)(1)(ii) of the Act.

In addition, your submission reveals that notwithstanding the representation in your contract that you will not be expected to act as an information-service employee, the activities contemplated under your contract would further qualify you as an “information-service employee” for [foreign organization] as defined by the Act. FARA defines an “information-service employee” to include, in relevant part, “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, . . . or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country.” Your contract with [foreign organization] provides that you will be “participating in the execution of information and communication events aimed at promoting the investment potential of [foreign country]” for [foreign organization], and therefore the Government of [foreign country]. This conduct qualifies you as an “information-service employee” under Section 611(c)(ii) and 611(i) of the Act in that you would be “furnishing, disseminating or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, or other benefits, advantages, facts or conditions” of [foreign country] and the government of [foreign country] in seeking foreign investment for [foreign country].

Having established that you are acting as an “agent of a foreign principal,” as defined by FARA, your February 20 Letter asks whether you qualify for an exemption under Section 613(d) of the Act for “bona fide trade and commercial activities.” Under Section 613(d), 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 the foreign principal; or (2) in other activities not serving predominantly a foreign interest[.]” 22 U.S.C. § 613(d) (emphasis added). Under FARA’s implementing regulations, “[t]he 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.”

With respect to the first basis for the commercial exemption (Section 613(d)(1)), in order to qualify for this exemption, the agent’s activities must be both private and nonpolitical. To that end, FARA’s implementing regulations provide that:

[the] 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

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<sup>4</sup> 22 U.S.C. § 611(h).

public or political interests of the foreign government.

28 C.F.R. § 5.304(b).

Although these regulations make clear that the exemption can apply even where the foreign principal is owned or controlled by a foreign government, in this case, your solicitation of foreign investment through [foreign organization], an organization created by the government of [foreign country] as its “investment promotion office,” cannot be construed as private and nonpolitical activity. Among other things, foreign investment often generates economic activity and creates jobs in the recipient country, thereby serving that country’s political and public interests.<sup>5</sup> Because your activities promoting the foreign investment potential and interests of [foreign country] qualify as “political activities” and are not “nonpolitical,” you do not qualify for this exemption.

With respect to the second basis for the commercial exemption (“other activities not serving predominantly a foreign interest” under Section 613(d)(2)), FARA’s implementing regulations provide that:

[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 or political party and the political activities do not directly promote the public or political interests of a foreign government or foreign political party.

28 C.F.R. § 5.304(c).

As set forth above, your agreement with [foreign organization] provides that you will participate in: (1) establishing communication and creating a basis for cooperation between [foreign organization] and foreign and [foreign country] investors, international organizations, and others; (2) promoting events designed to attract foreign investment in [foreign country]; and (3) carrying out other measures aimed at attracting investment in [foreign country], providing conditions for the implementation of investment projects in [foreign country], and improving [foreign country]’s investment climate. Given these parameters, it is not clear that your public relations activities or your activities as an information-service employee are solely in furtherance of the bona fide commercial, industrial, or financial operations of [foreign organization]. Instead, your public relations and information-service activities are political in nature and appear designed to promote the public and political interests of the Government of [foreign country].

Moreover, it is evident that a number of the activities to be performed by you pursuant to

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<sup>5</sup> See also Adv. Op., Jan. 20, 1984 (concluding that “an influx of capital and a host of jobs for the indigenous population . . . are obviously in the political and public interests of [foreign country]”), available at <https://www.justice.gov/nsd-fara/page/file/1046156/download>.

[Requestor]  
April 6, 2023  
Page 6 of 6

the Agreement directly promote the interests of the Government of [foreign country] and therefore are not “other activities not serving predominantly a foreign interest” within the meaning of Section 613(d)(2). Among other things, your activities in soliciting and promoting foreign investment in [foreign country] through [foreign organization] serve the Government of [foreign country]’s interests. Indeed, [foreign organization] was established by the Government of [foreign country] to function as its “investment promotion office,” that is, to fulfill a public and political interest of that government to increase domestic economic activity through an influx of foreign capital. We therefore conclude that the exemption does not apply to the activities outlined in your February 20 Letter and Agreement because the activities not only serve predominantly the public and political interests of the Government of [foreign country] but are themselves “political activities” requiring registration.<sup>6</sup>

Please effectuate your registration under FARA within 10 days. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail at [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>6</sup> 22 U.S.C. § 611(o).