



**U.S. Department of Justice**

National Security Division

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Counterintelligence and Export Control Section

Washington, DC 20530

May 25, 2023

**By Email**

[Requestor]  
[Requestor's company]  
[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 April 25, 2023 (“April 25 Letter”), in which [requestor’s company] requests an opinion, pursuant to 28 C.F.R. § 5.2(a), as to whether it would 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 it would perform under a proposed agreement with the Embassy of [a foreign country]. Based on the proposed agreement and information provided in your April 25 Letter, we assess that [requestor’s company] will be obligated to register under FARA.

The April 25 Letter states that [requestor’s company] is a consulting firm incorporated in the United States, in the State of [redacted]. [Requestor’s company] has been discussing with the Commercial Counselor, [name redacted], of the Embassy of [ a foreign country] as well as [the foreign country’s] Ambassador to the United States, [name redacted] (collectively the “Embassy of [the foreign country]”), the possibility of [requestor’s company] being retained to perform services for the Embassy of [the foreign country]. Specifically, [requestor’s company] would be organizing a visit by the Ambassador to [U.S. city] and introducing him to (1) private industry leaders in the [specific industry] to discuss trade and commercial opportunities, and (2) officials of the City of [redacted] to build a strong relationship between [the foreign country] and [the U.S., city]. [Requestor’s company] informs us that its duties during the proposed visit would also include managing the Ambassador’s visits to [U.S. city] -area universities and attendance at other meetings and conferences. [Requestor’s company] states that it would also create and manage presentations and coordinate private business meetings with other U.S. companies.

Notwithstanding these proposed activities, [requestor’s company] represents that it would not provide government relations, public relations, or political consulting services to the Embassy, and would not lobby or appear before any U.S. government official or member of Congress on behalf of the Embassy. [Requestor’s company] further notes that it is not registered as a lobbyist pursuant to the Lobbying Disclosure Act, 2 U.S.C. § 1601 *et seq.* (“LDA”). [Requestor’s company] inquires whether the above-described activities would qualify it for FARA’s 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.”<sup>1</sup> Based on the facts provided, we first note that the Embassy of [the foreign country] is an agency of a foreign government, and, as such, 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.<sup>2</sup>

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.”<sup>3</sup>

The April 25 Letter informs us of a proposed agreement [requestor’s company] would enter into with the Embassy of [the foreign country] to provide the services described above. Based on [requestor’s company]’s representations—including the fact that it has a written agreement with the Embassy of [the foreign country]—we find that [requestor’s company] will be acting at the “direction or control” of the Embassy of [the foreign country] pursuant to its contract.<sup>4</sup>

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<sup>1</sup> 22 U.S.C. § 611(b)(1).

<sup>2</sup> 22 U.S.C. § 611(c)(1).

<sup>3</sup> 28 C.F.R. § 5.100(b).

<sup>4</sup> See § 5.100(b) (defining “control” to include the power to determine a party’s activities by contract).

We next consider the activities [requestor's company] would engage in pursuant to this agreement. As described in the April 25 Letter, [requestor's company]'s activities on behalf of the Embassy of [the foreign country] involve promoting trade and commercial opportunities in [the foreign country]'s [specific industry] on behalf of the Embassy of [the foreign country].

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.”<sup>5</sup> Here, [requestor's company]'s activities on behalf of the Embassy relate to and are intended to advance the public interests of the Government of [the foreign country], and thus qualify as “political activities” under the Act.<sup>6</sup>

In addition, the activities contemplated under [requestor's company]'s proposed contract would qualify it as a publicity agent for the Embassy of [the foreign country], 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 any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise[.]”<sup>7</sup> [Requestor's company]'s contract with the Embassy of [the foreign country] provides that [requestor's company] would “create and manage presentations” and attend and manage conferences for the Embassy to promote trade and commercial opportunities in [the foreign country]'s [specific industry]. This conduct qualifies [requestor's company] as a publicity agent under the Act.

[Requestor's company]'s activities would also qualify it as acting as a “public-relations counsel,” which FARA defines as “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.”<sup>8</sup> Creating and managing presentations and attending and managing conferences falls within this definition when performed for the Embassy in furtherance of its goal to promote [the foreign country]'s [specific industry].

In addition, [requestor's company]'s proposed activities would qualify it as an “information-service employee.” That term is defined to include, in relevant part, “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data

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<sup>5</sup> 22 U.S.C. § 611(o).

<sup>6</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>.

<sup>7</sup> 22 U.S.C. § 611(h).

<sup>8</sup> 22 U.S.C. § 611(g).

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.”<sup>9</sup> [Requestor's company]'s contract with the Embassy requires [requestor's company] to “create and manage presentations” to promote trade and commercial opportunities in [the foreign country]. Because [requestor's company] 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 [the foreign country], [requestor's company] would qualify as an information-service employee under the Act.

Having established that [requestor's company] would be acting as an “agent of a foreign principal,” as defined by FARA, your April 25 Letter asks whether [requestor's company] would 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[.]”<sup>10</sup> 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.”<sup>11</sup>

With respect to the basis for the exemption defined in Section 613(d)(1), in order to qualify for this exemption, [requestor's company]'s activities must be both private and nonpolitical. 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 public or political interests of the foreign government.

28 C.F.R. § 5.304(b).

These regulations make clear that the exemption can apply even where the foreign principal is owned or controlled by a foreign government. However, in this case, [requestor's company]'s activities are pursuant to a proposed agreement directly with the Embassy of [the foreign country], and thus would directly promote the public and political interests of that country. As a result, they do not constitute private and nonpolitical activity. [Requestor's company]'s activities promoting trade and commercial opportunities in [the foreign country]'s [specific industry] is intended to generate economic activity and create jobs in [the foreign country], thereby serving that country's

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<sup>9</sup> 22 U.S.C. § 611(i).

<sup>10</sup> 22 U.S.C. § 613(d)(1) (emphasis added).

<sup>11</sup> 22 U.S.C. § 5.300.

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political and public interests.<sup>12</sup> Because [requestor's company]'s activities qualify as "political activities" and are not "nonpolitical," [requestor's company] does not qualify for this exemption.

With respect to the basis for the exemption defined in Section 613(d)(2), to qualify for this exemption, [requestor's company] must be "engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest." To that end, FARA's implementing regulations provide that engaging in political activities on behalf of a foreign corporation will not be serving predominantly a foreign interest:

[S]o long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party."<sup>13</sup>

Here, however, [requestor's company]'s activities are pursuant to a proposed agreement directly with the Embassy of [the foreign country], are directed by the Government of [the foreign country] and are intended to directly promote [the foreign country]'s public and political interests. [Requestor's company]'s activities therefore cannot be construed as private and nonpolitical—a conclusion reinforced by the fact that they qualify as "political activities" under the Act. As a result, [requestor's company] does not qualify for this exemption. We therefore conclude that [requestor's company]'s agreement with the Embassy of [the foreign country] requires [requestor's company] to register under FARA.

Please effectuate [requestor's company]'s registration under FARA within 10 days of the agreement, or prior to acting if within the 10 days, if [requestor's company] decides to undertake the activities proposed in the contract as set forth in your April 25 Letter. 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>12</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>.

<sup>13</sup> 28 C.F.R. § 5.304(c).