



June 20, 2023

Via E-mail

[Name and 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, as modified by your follow-up letter of April 10, 2023 (collectively, the “January 10 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to whether certain activities in the United States contemplated by your client, [redacted] (“[Foreign Company]”), will require registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based on the representations made in the January 10 Letter and for the reasons and subject to the qualifications and conditions more fully stated herein, we do not contest your assertion that these activities do not require registration under the Act at this time because they do not serve predominantly a foreign interest and therefore qualify for the exemption set out in Section 613(d)(2) of the Act.¹ Similarly, and for the reasons and subject to the qualifications and conditions discussed below, we are also of the view that registration under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 *et seq.* (the “LDA”), would qualify [Foreign Company] for the exemption from FARA registration set out in Section 613(h) of the Act.²

Background

According to the January 10 Letter,

[Foreign Company] was created to serve as a formal association representing [Industry Group] in [Foreign Country]. Headquartered in [Foreign Country], [Foreign Company] was formally incorporated on [redacted] and today has [redacted] [Member Companies], all of which are private [Industry Group Members]. [Foreign Company] is governed by a Board of [redacted] senior executives from [Member Companies].³

¹ 22 U.S.C. § 613(d)(2).

² 22 U.S.C. § 613(h).

³ January 10 Letter at [redacted].

The January 10 Letter provides a link to the [Foreign Company] membership list at [redacted]. [Redacted]. Full-time members [are able to vote at meetings and participate in advocacy]. Based on your follow-up e-mail dated May 19, 2023, we understand that all of [Foreign Company]'s full, voting members are incorporated under the laws of [Foreign Country] and each "is a private, non-governmental entity that is neither owned nor controlled by the [Foreign Country] government"⁴ (all such members collectively, the "Voting Members").

Also according to the January 10 Letter, [Foreign Company] "is not directed or controlled, nor does it receive any funding from, the [Foreign Country] government."⁵ Its "areas of focus include advocating for members on regulatory, tax, and other industry developments; keeping members informed; and providing community, education, and professional development."⁶ The January 10 Letter describes the following activities that [Foreign Company] plans to undertake:

To further its goals of promoting the [Industry Group] in [Foreign Country], [Foreign Company] intends to begin engaging in certain political/lobbying activities in the United States in the near future. These activities include, for example, meetings with [Federal Agency #1] to discuss the [Foreign Country] [Industry Group] [redacted], meetings with state and local regulators in the United States, educational sessions on Capitol Hill regarding [Foreign Country]/[Industry Group], and meetings with [Federal Agency #2] to discuss policy issues.

...

[Foreign Company]'s U.S.-based political activities are solely geared towards promoting the interests of [Member Companies] and not advancing any political or public interest of the [Foreign Country] government or any political party in [Foreign Country].

...

[Foreign Company]'s activities are intended to promote laws, policies, and developments that benefit the financial and commercial interests of [Member Companies], all of which are private companies.⁷

(collectively, the "U.S. Political Activities"). [Redacted].

The January 10 Letter states that the U.S. Political Activities will be engaged in by [Foreign Company Officer #1] and [Foreign Company Officer #2], and possibly by [Foreign Company Board Member #1] and [Foreign Company Board Member #2].⁸ [Redacted]. According to the January 10 Letter,

[Foreign Company Officer #1] is a [former official] of the [Foreign Country] government, [redacted]. Although [Foreign Company Officer #1] is currently [an elected official of Foreign Country government] [redacted], his role [redacted] is limited to representing his constituents in [Foreign Country]'s [legislature].

⁴ E-mail message dated May 19, 2023 [redacted].

⁵ January 10 Letter at [redacted].

⁶ *Id.* at [redacted].

⁷ January 10 Letter at [redacted].

⁸ January 10 Letter at [redacted].

Moreover, his role in [Foreign Company] is separate and distinct from his position as [an elected official of Foreign Country government].

While [Foreign Company Officer #1] is currently [an elected official of Foreign Country government], his U.S.-based advocacy efforts are being exclusively conducted on behalf of and in his capacity as an agent of [Foreign Company]. These activities are not being performed on behalf of the [Foreign Country] government or a political party in [Foreign Country], or in connection with [Foreign Company Officer #1]’s status as [an elected official of Foreign Country government]. Rather, these activities are being conducted in [Foreign Company Officer #1]’s capacity as [an officer] of [Foreign Company].⁹

FARA Analysis

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.”¹⁰ As stated in your follow-up e-mail dated May 19, 2023, we understand that all of the Voting Members are incorporated under the laws of [Foreign Country]. [Foreign Company] is therefore controlled by numerous foreign principals for purposes of the Act.

Absent an applicable exemption, the registration requirements of the Act extend to an “agent of a foreign principal,” which is defined in relevant part as

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity . . . under the direction or control, of a foreign principal . . . and who . . .

(i) engages within the United States in political activities for or in the interests of such foreign principal[.]¹¹

The term “political activities” is defined in the Act in relevant part to mean:

any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States[.]¹²

Based on the representations in the January 10 Letter, the U.S. Political Activities constitute “political activities” under the Act. [Foreign Company] itself, as well as, individually, [Foreign Company Officer #1], [Foreign Company Officer #2] and, to the extent they engage is

⁹ *Id.* at [redacted].

¹⁰ 22 U.S.C. § 611(b)(3).

¹¹ 22 U.S.C. § 611(c)(1).

¹² 22 U.S.C. § 611(o).

the U.S. Political Activities, [Foreign Company Board Member #1] and [Foreign Company Board Member #2] would therefore all be agents of the Voting Members, which are foreign principals for purposes of the Act's registration requirements (each such individual, an "Individual Agent" and the four individuals collectively, the "Individual Agents"). Absent an applicable exemption, therefore, both [Foreign Company] and the Individual Agents would be required to register under the Act.¹³

The January 10 Letter asserts, and asks us to concur, that the exemption from registration described in Section 613(d)(2) of the Act would apply to [Foreign Company]'s and the Individual Agents' performance of the U.S. Political Activities.¹⁴ Section 613(d) 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).¹⁵

Given that the U.S. Political Activities are clearly not "nonpolitical" for purposes of the Act, the exemption under Section 613(d)(1) does not apply. The January 10 Letter argues that the exemption under Section 613(d)(2) should apply because "[Foreign Company]'s activities are intended to promote laws, policies, and developments that benefit the financial and commercial interests of its members, all of which are private companies."¹⁶

We agree that the exemption under Section 613(d)(2) should apply to the U.S. Political Activities. Properly analyzed, [Foreign Company] (including the Individual Agents) is the agent of numerous foreign principals (*i.e.*, the Voting Members), each of which is a foreign corporation for purposes of the Act. We must also call to your attention the requirements of Section 5.304(c) of the FARA Regulations, which provides in relevant part as follows:

[A] person engaged in political activities on behalf of a foreign corporation . . . 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 promote the public or political interests of a foreign government or of a foreign political party* (emphasis added).¹⁷

In order for the Section 613(d)(2) exemption to apply to the U.S. Political Activities, therefore, [Foreign Company] (including the Individual Agents) may not engage in activities that directly promote the public or political interests of the government of [Foreign Country] or of a political party in [Foreign Country].

We note as a preliminary matter that you have assured us that each of the Voting Members

¹³ See 28 C.F.R. § 5.202.

¹⁴ January 10 Letter at [redacted].

¹⁵ 22 U.S.C. § 613(d).

¹⁶ January 10 Letter at [redacted].

¹⁷ 28 C.F.R. § 5.304(c).

“is a private, non-governmental entity that is neither owned nor controlled by the [Foreign Country] government.”¹⁸ We are, however, concerned by [Foreign Company Officer #1]’s status as [an elected official of Foreign Country government] (in addition to being a [former official] of the [Foreign Country] government).¹⁹ It is also reasonable to infer that [Foreign Company Officer #1] is a member of a political party in [Foreign Country].

We note the January 10 Letter’s statement that the U.S. Political Activities “are not being performed on behalf of the [Foreign Country] government or a political party in [Foreign Country], or in connection with [Foreign Company Officer #1]’s status as [an elected official of Foreign Country government],”²⁰ but rather in [Foreign Company Officer #1]’s private capacity as an Individual Agent. In order for [Foreign Company] to take advantage of the Section 613(d)(2) exemption, the U.S. Political Activities engaged in by [Foreign Company] and by [Foreign Company Officer #1] and the other Individual Agents on behalf of [Foreign Company] must not be “directed by a foreign government” (in the person of [Foreign Company Officer #1] as a current, as well as a former, representative of the government of [Foreign Country]) or “directly promote the public or political interests of a foreign government” (in the form of [Foreign Company Officer #1] as a representative of the government of [Foreign Country]) “or of a foreign political party” (*i.e.*, the political party in [Foreign Country] to which [Foreign Company Officer #1] belongs).²¹

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.”²² Our opinion that the Section 613(d)(2) exemption would apply to the U.S. Political Activities is expressly conditioned on [Foreign Company] and the Individual Agents being able to meet that burden on a continuing basis.

You have also inquired as to the applicability of the exemption in Section 613(h) of the Act. Section 613(h) provides the “LDA exemption,” which allows an agent serving a foreign entity to claim exemption from registration if the agent “has engaged in lobbying activities and has registered under [the LDA] in connection with the agent’s representation of such . . . entity.”²³ FARA’s implementing regulations further clarify the scope of the exemption, stating, “In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under [613(h)] be recognized.”²⁴

If [Foreign Company] registers under the LDA, the exemption from registration under Section 613(h) of the Act would be available, *provided that*, consistent with the language quoted above, neither the government of [Foreign Country] nor a political party in [Foreign Country] is the principal beneficiary of the U.S. Political Activities.²⁵ With respect to the availability of this

¹⁸ E-mail message dated May 19, 2023 sent by [redacted] to Fara.Public@usdoj.gov at [redacted].

¹⁹ January Letter at [redacted].

²⁰ *Id.* at [redacted].

²¹ *See* 28 C.F.R. § 5.304(c).

²² 28 C.F.R. § 5.300.

²³ 22 U.S.C. § 613(h).

²⁴ 28 C.F.R. § 5.307.

²⁵ *See id.*

exemption, we express reservations similar to those discussed above with respect to the exemption under Section 613(d)(2). A “foreign government” (in the form of [Foreign Company Officer #1] as a representative of the government of [Foreign Country]) or “a foreign political party” (*e.g.*, the political party in [Foreign Country] to which [Foreign Company Officer #1] belongs) must not be [redacted] the principal beneficiaries of the U.S. Political Activities. Subject to that condition, we are of the view that the U.S. Political Activities would qualify for the Section 613(h) exemption from FARA registration, provided, of course, that [Foreign Company] does in fact register under the LDA.

Please note that any change in the facts and circumstances you related to us may change the status of [Foreign Company] and the Individual Agents, and they 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, conditions, and conclusions stated herein.

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 or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit