



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 5, 2023

Via E-mail

[Requestor]

[Address]

[email address]

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

Dear [Requestor]:

This is in reference to your letter dated May 29, 2023 (“May 29 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding your possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”) for activities you expect to perform as a future employee of [foreign company]. Based on our review of your request, we have determined that you would not be obligated to register under FARA for your proposed activities on behalf of [foreign company].

In the May 29 Letter, you inform us that [foreign company] is a [foreign country] company located in [foreign location] and owned by [foreign country] nationals. You report that you will be serving as a Lead Technology Specialist for [foreign company] and that your responsibilities will include the development of engineering products, the formulation of technology strategies, and the pursuit of new business opportunities for the company. You further inform us that, although you will be residing in the [foreign country], your role at [foreign company] will involve seeking U.S. Government clients and actively pursuing partnerships and collaborations with companies in the United States, both as a supplier and as a consultant. You inquire whether these activities would trigger a registration requirement under FARA.

Generally speaking, save certain exemptions, a party is an “agent of a foreign principal” that must register under FARA if it 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 within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee, or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, 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.

See 22 U.S.C. § 611(c)(1).

[Foreign company] is a “foreign principal” as defined by the Act because it is a corporation or organization organized under the laws of a foreign country and having its principal place of business in a foreign country, [redacted]¹ Should you perform the above-described activities for [foreign company], you would be acting “at the order, request, or under the direction or control, of a foreign principal.”²

We have determined that you would be acting as an agent of [foreign company] in representing its interests before officials with the U.S. government.³ In the May 29 email, you state that you will be expected to pursue clients for [foreign company] in the U.S. government sector. To the extent that your activities include setting up and attending meetings with U.S. government personnel, that conduct clearly constitutes representing [foreign company]’s interests before a U.S. government official.

In addition, we have determined that you would also be acting as an “information-service employee,” as defined by the Act. FARA defines an information-service employee, in relevant part, to include:

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 . . . or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in a foreign country.⁴

Because your activities would include providing accounts, descriptions, information, or data concerning the industrial, economic, or other benefits and advantages of [foreign company], a foreign corporation, they would qualify you as an information-service employee and thus require your registration.

¹ 22 U.S.C. § 611(b)(3).

² 22 U.S.C. § 611(c)(1).

³ *See* 22 U.S.C. § 611(c)(1)(iv).

⁴ 22 U.S.C. § 611(i).

[Requestor]

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Although you have not claimed that you qualify for an exemption from FARA registration, we consider whether you would qualify for the exemption available under Section 613(d) of the Act for “bona fide trade and commercial activities.” Section 613(d)(1) exempts an agent of a foreign principal from FARA’s registration requirements if the agent engages “*only . . . in private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal.*”⁵ Importantly, in order to qualify for this exemption, your activities on behalf of [foreign company] must be both private and nonpolitical.⁶

Based on the information provided, your activities on [foreign company]’s behalf meet these criteria. The proposed activities—selling [foreign company]’s engineering services—appear private and nonpolitical in that they appear intended solely to advance [foreign company]’s commercial interests.⁷ This conclusion is reinforced by your representation that [foreign company] is privately owned, not controlled by the [foreign country’s] government. Based on the facts you provided, your activities appear to be “in furtherance of the bona fide trade or commerce” of [foreign company].⁸ Accordingly, we conclude that the exemption under Section 613(d)(1) applies, and the proposed activities therefore would not require registration under the Act.

If there are any future developments that affect the above analysis, such as a change in the scope of your anticipated duties on behalf of [foreign company], please reach out to the FARA Unit for further discussion.

If you have any questions regarding this matter, please contact the FARA Unit by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

⁵ 22 U.S.C. § 613(d)(1) (emphasis added).

⁶ 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 agency or official of the Government of the United States or 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).

⁷ See 22 U.S.C. § 613(d)(1).

⁸ See *id.*