



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 14, 2022

Via FedEx

[Requestor]

[your company]

[Address]

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

Dear Mr. [redacted]:

This is in reference to your letter of May 20, 2022 (“the May 22 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 [your company] will engage in pursuant to a contract with [foreign corporation]. Based on our review of your request, we determined that you would be obligated to register under FARA for the proposed activities to be undertaken on behalf of the [foreign corporation] as described in your submission.

In the May 22 Letter, you informed us that the [foreign corporation] is a private, foreign-owned and headquartered corporation, the stock of which is traded on the [foreign] stock exchange. The [foreign corporation]’s website discloses that [redacted] and other prominent [foreign] government officials serve on its board of directors. [Redacted] and that, in that regard, [foreign corporation] desires to engage with the U.S. government to obtain contracts [redacted]. You disclosed that your company entered into a contract on May 15, 2022, with [foreign corporation] to engage on its behalf with certain departments and agencies of the U.S. Government. You disclosed that the statement of work in [your company]’s contract with [foreign company] provides, in pertinent part, that [your company] will:

- (1) develop and manage the engagement with the United States Congress, Departments of [Redacted] and other applicable Agencies with the intent to encourage investment in the identified areas of priority by [foreign corporation];
- (2) in concert with an understanding of *priorities within the [foreign country]*, along with legislative and budgetary efforts in Congress, [your company] will work with the Departments of [Redacted] and other applicable Agencies to streamline the [Redacted]¹ and [Redacted]² procurement process.

(Emphasis added). The May 22 Letter asks whether these activities would trigger a registration

¹ The acronym [Redacted], administered by the [Redacted]. The regulations implement a [Redacted].

² The acronym [Redacted] administers the [Redacted]. The [Redacted] program is authorized by the [Redacted]

requirement.

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 corporation] is a “foreign principal” as defined by the Act, 22 U.S.C. § 611(b)(3), as it is a corporation or organization organized under the laws of a foreign country and has its principal place of business in [foreign country]. In undertaking the above-described contractual activities on behalf of [foreign company], [your company] will clearly be acting “at the order, request, or under the direction or control, of a foreign principal,” 22 U.S.C. § 611(c)(1).³

Thus, we have determined that you would be acting as an agent of the foreign principal, [foreign corporation], in representing its interests with and advocating before officials with agencies of the U.S. government. *See*, 22 U.S.C. § 611(c)(1)(iv). The elements of the statement of work provided with the May 22 Letter note you will both “develop and manage the engagement with the United States Congress, Departments of [Redacted] and other applicable Agencies with the intent to encourage investment in the identified areas of priority by [foreign corporation]” and further, that “[your company] will work with the Departments of [Redacted] and other applicable Agencies to streamline the [Redacted] process.” To the extent that your representation of [foreign company] before U.S. government officials will include advocating for specific measures to streamline the [Redacted] and [Redacted] procurement processes, rather than merely assisting [foreign corporation] in applying for existing licenses, approvals or authorities, you would be engaged in political activities as an agent of the [foreign corporation], because your advocacy is undertaken with an intent to influence the U.S. government “with reference to formulating, adopting, or changing the domestic or foreign policies of the United

³ FARA’s implementing regulations, at 28 C.F.R. § 5.100(b), provides that “the term *control* or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or activities of a person, whether through the ownership of voting rights, by *contract*, or otherwise.” (emphasis added).

[Requestor]
[Your company]
July 14, 2022
Page 3 of 3

States[.]” 22 U.S.C. §611(c)(1)(o). The regulations implementing FARA provide that the terms “formulating, adopting, or changing,” as used in the definition of “political activities” outlined in the Act, also include “any activity which seeks to maintain any existing domestic or foreign policy of the United States.” 28 C.F.R. § 5.100(e).

Although the May 20 Letter asserted that the government of [foreign country] does not have an ownership stake in [foreign company], [your company]’s advocacy activities are not undertaken solely in furtherance of the bona fide commercial, industrial, or financial operations of the [foreign corporation]. See 28 C.F.R. § 3.504(c). Not only are [foreign government] officials serving as members of the [foreign corporation]’s board, the contract between [your company] and the [foreign corporation] mandates that [your company] factor in “an understanding of priorities within the [foreign country]” when “work[ing] with the Departments of [Redacted] and other applicable Agencies to streamline the [Redacted] and [Redacted] procurement process.” Further, as the Government of [foreign country] is the requisite counterparty to any [Redacted] transaction and will likely be a party to or benefit from future [Redacted] transactions resulting from [your company]’s engagement, it will be the beneficiary of [your company]’s advocacy. Because [your company] will be engaging in political activities designed to promote the public and political interests of the government of the [foreign country] by advancing the acquisition of military equipment and technologies, [your company] is obligated to register as an agent of the [foreign corporation].

Please effectuate [your company]’s registration within the next thirty (30) days. If you have any questions regarding this matter, please contact [redacted] by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit