



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 19, 2022

Via E-mail

[names]

[address]

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

Dear [name] and [name]:

We write in response to your letter of July 28, 2022 (“July 28 Letter”), in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), as to whether your client, [U.S. Company], has 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 is performing under an agreement with [Domestic Subsidiary of Foreign Government-owned Company]. Based on the representations made in the July 28 Letter, we assess that [U.S. Company] is not obligated to register under the Act because the activities described in the letter are private, non-political, commercial activities which qualify for the exemption set out in Section 613(d)(1) of the Act.

According to your submission,¹ on April 1, 2022, [U.S. Company] entered into an agreement with [Domestic Subsidiary], to provide [Domestic Subsidiary] with brand management, marketing, strategic planning, account management services, advertising strategies, and advertising services. The contract is effective through March 31, 2028. The July 28 Letter represents that [Domestic Subsidiary] is a Delaware corporation that is indirectly owned by [Foreign Government].²

Under FARA, a party is an “agent of a foreign principal” who 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

¹ The submission included the July 28 Letter and a copy of the Service Contract Agreement between [U.S. Company] and [Domestic Subsidiary], effective April 1, 2022.

² [Footnote redacted].

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).

Based on the facts provided, and because [U.S. Company] is seeking an exemption from registration, the July 28 Letter indicates that [U.S. Company] would be acting as an agent of a foreign principal within the meaning of FARA and would be required to register absent an exemption. The [Foreign Government] and [Foreign Government-owned Corporation] are “foreign principals” within the meaning of 22 U.S.C. § 611(b). Because [U.S. Company] has entered into a contract with [Domestic Subsidiary], it is acting as an indirect agent of the [Foreign Government] and [Foreign Government-owned Corporation], through [Foreign and Domestic Intermediaries], each of which exercise control over [Domestic Subsidiary].³ Further, pursuant to the contract, [U.S. Company] is and will be engaged in the activities of a publicity agent, by publishing or disseminating oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, which otherwise, absent an exemption, requires registration under FARA. 22 U.S.C. §611(c)(1)(ii) and (h).

Under Section 613(d) of FARA, 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.” 22 U.S.C. § 613(d) (emphasis added).

With respect to the first part of the exemption, FARA’s implementing regulations provide: “As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.” 28 C.F.R. § 5.304(a). Of particular relevance as to [Foreign Government-owned Corporation’s] indirect ownership of [Domestic Subsidiary], the regulations also provide, that “[f]or the purpose of section 3(d) of the Act, activities of an agent of a foreign principal in furtherance of the 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.” *Id.* at § 5.304(b).

The activities described in your submission are confined to commercial activities such as brand management, marketing, strategic planning, account management services, advertising strategies, and executing advertising. There is no mention of you engaging in political or other activities referenced in FARA that would render your activities anything other than “private and nonpolitical in furtherance of the bona fide trade or commerce” of the foreign principals’ U.S. subsidiary. Therefore, we conclude that the activities described in your submission are being

³ The term “control” or any of its variants includes the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person whether through the ownership of voting rights, by contract, or otherwise. 28 C.F.R. § 5.100(b).

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undertaken solely for the purpose of furthering the commercial interests of [Domestic Subsidiary], with incidental financial benefits to [Foreign Government-owned Corporation] and the [Foreign Government], and are, therefore, exempt from the registration requirements of FARA.

Please note that any change in the facts and circumstances you related to us may change your status and you could be required to register. If any such change does occur, you should contact us immediately.

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