



**U.S. Department of Justice**

National Security Division

*Counterintelligence and Export Control Section*

*Washington, DC 20530*

October 25, 2018

**By Email and First Class Mail**

[addressee deleted]

Re: [text deleted]  
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

This is in reference to your letter of September 18, 2018, in which you request an advisory opinion pursuant to 28 C.F.R. § 5.2 regarding the possible obligation of your client, [domestic subsidiary 1], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”).

As you know, the purpose of FARA is to inform the American public of the activities of foreign agents working for foreign principals to influence U.S. government officials and/or the American public with reference to the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party. The term “foreign principal” includes “a government of a foreign country and a foreign political party, any person outside the United States. . . , and 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.” 22 U.S.C. § 611(b). Further, a party is an “agent of a foreign principal” who must register under FARA if it acts “at the order, request, or under the direction or control of a foreign principal” and engages within the United States in one of the following activities:

- (i) in political activities for or in the interests of such foreign principal;
- (ii) acts as a 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

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(iv) represents the interests of such foreign principal before any agency or official of the Government of the United States[.]

22 U.S.C. § 611(c).

According to your September 18, 2018, letter, your client, [domestic subsidiary 1], is a wholly-owned subsidiary of [foreign corporation], a company registered in [foreign country], located in the United States, which provides [services deleted]. Your letter states that [domestic subsidiary]’s shares are, in turn, held one-third each by the [foreign government 1], the [foreign government 2], and private utility companies in [foreign country]. You inform us that another entity, [domestic subsidiary 2], is also a wholly-owned subsidiary of [foreign corporation] and serves as the marketing entity for [foreign corporation] in North America. [domestic subsidiary 2] is registered under FARA, registration number [text deleted], as a foreign agent of [foreign corporation]. You further inform us that on [dated deleted], the Department of Commerce launched an investigation [text deleted] threaten to impair national security under Section 232 of the Trade Expansion Act of 1962. Your letter states that, as the [text deleted], [domestic subsidiary 1] has significant commercial interests in the United States that could be affected by the Section 232 investigation. Thus, [domestic subsidiary 1] plans to submit written comments and to attend any public hearing in this investigation. [domestic subsidiary 1] also plans to participate in any meetings at various agencies, including the Departments of Commerce, Defense, Energy or State, concerning its commercial interests that could be affected by this investigation.

Although not specifically stated in your letter, we concur with an assessment of the facts indicating that [domestic subsidiary 1] is engaged in political activities,<sup>1</sup> and thus is acting as an agent of foreign principal pursuant to the Act. 22 U.S.C. § 611(c)(i). At the same time, we recognize that the activities described and proposed in your letter may fall within one of the exemptions enumerated in FARA. In your September 18, 2018, letter, you assert that [domestic subsidiary 1]’s activities are exempt from registration pursuant to Section 613(d)(2) because they do not serve predominantly a foreign interest.<sup>2</sup>

Based upon the foregoing representations in your letter describing the nature and extent of activities proposed to be undertaken by your client in connection with the Section 232 investigation, we do not contest that the proposed activities qualify for the exemption from registration under FARA pursuant to Section 613(d)(2) because they do not serve predominantly a foreign interest. The regulation explaining the exemption articulated in Section 3(d)(2),

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<sup>1</sup> The term “political activities” means 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 or with reference to the political or public interests, policies, or relations of a government of a foreign country or foreign political party. 22 U.S.C. § 611(o).

<sup>2</sup> “Any person engaging or agreeing to engage only . . . (2) in other activities not serving predominantly a foreign interest; . . .” 22 U.S.C. § 611(d)(2).

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provides that:

a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, 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 or 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.

28 C.F.R. §5.304(c).<sup>3</sup>

Please note that the questions of obligation and exemption are based solely upon the specific facts set out in your September 18, 2018, letter and must be revisited in the event that any of the facts change. Thus, should your client's activities change in a way that promotes the public or political interests of a foreign government or foreign political party, a registration under FARA may be required because your client could be acting as an agent of a foreign principal and not be entitled to an exemption. 22 U.S.C. § 611(c)(1). In this instance, you or your client should contact the Registration Unit immediately in order that we may reexamine whether your client has an obligation to register.

If you have any questions regarding this matter, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Heather H. Hunt, Chief  
FARA Registration Unit

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<sup>3</sup> Because we are reaching a conclusion based on the exemption from registration set out in Section 613(d)(2) of the Act, we need not reach a determination on the application of the exemption under Section 613(h).