



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 8, 2022

Via E-mail

[Lawyer]

[Address]

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

Dear [Lawyer]:

We write in response to your letter of July 12, 2022 (“July 12 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the registration obligation of your firm, [Firm Name] (“[Firm Name]” or the “Firm”), under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with its representation of [Foreign Company] and [Foreign Individual] (collectively, “Clients”). The July 12 Letter seeks confirmation that [Firm’s] activities on behalf of its Clients qualify for the legal representation exemption from FARA’s registration obligations, as outlined in Section 613(g) of the Act. The July 12 Letter also seeks confirmation that consultants retained by [Firm] incident to its representation of its Clients not be required to register under FARA. After careful consideration of your request, including the specific representations therein concerning the narrow scope of legal advocacy, we have concluded that the Firm’s activities do fall within the legal exemption and [Firm] would not be obligated to register under the Act for the activities described in the July 12 Letter. With respect to the Firm’s request concerning consultants hired incident to the Firm’s representation, we decline to render an opinion pursuant to 28 C.F.R. § 5.2(b).¹

I. Relevant Facts

According to the July 12 Letter, the [Foreign Company] corporate group is an [Redacted] which includes several independent companies.² The July 12 Letter further asserts that [Redacted] is the co-founder and Chief Executive Officer of [Foreign Company]. The July 12 Letter provides a detailed recitation of [Redacted] litigation brought by the Department of Justice in the United States District Court for the [Judicial District] and two consolidated appeals to the United States Court of Appeals for the [Judicial] Circuit (Dkt. Nos. [Redacted]) (collectively, the “Pending U.S. Litigation”). According to the July 12 Letter, the Department of Justice has alleged that [Foreign Individual], utilizing various [Foreign Company] entities, engaged in an international conspiracy to launder money allegedly misappropriated from [Foreign Fund]. [Foreign Fund] is a sovereign wealth fund that is wholly owned by the Government of [Foreign Country]. According to the July

¹ Section 5.2(b) of FARA’s implementing regulations state that “[r]eview requests must be submitted by a party to the transaction or the party’s attorney, and have no application to a party that does not join in the request.”

² Although not articulated in the July 12 letter, we understand [Foreign Company] to be a private [Foreign Country]-[Redacted] company incorporated in [Foreign Country], which maintains offices in [Different Foreign Country].

12 Letter's description of the Complaint filed by the Department of Justice, the conspiracy, [Redacted] had as its object to divert funds from [Foreign Fund] and to launder the proceeds through various U.S. financial institutions with the goal of purchasing [Redacted], [Redacted], and fund [Redacted].³

According to the July 12 Letter, the Firm was retained by its Clients to assist in negotiating a settlement of the Pending U.S. Litigation and a potential declination of criminal charges against the Clients. In support of its assertion of the legal exemption, the Firm provided the following, non-exhaustive list of activities in which it believes will be required as part of its representation:

1. Preparing attorney opinions and legal analyses on behalf of the Clients;
2. representing the Clients before the Department of Justice as it relates to the settlement of the Pending U.S. Litigation and potential declination or deferment of criminal charges;
3. preparing documents in furtherance of obtaining a settlement of the Pending U.S. Litigation and potential declination or deferment of criminal prosecution; and
4. providing background information on its Clients and corresponding with officials of the Department of Justice.

The July 12 Letter also states that the Firm does not intend to undertake any lobbying activity, discussions or negotiations with any elected officials, discussions or negotiations with the media, or any public relations activities on behalf of its Clients in connection with the Pending U.S. Litigation. The Firm asserts that it will not provide any responses to media inquiries about its Clients, issue press releases containing facts regarding the Pending U.S. Litigation or any declination or deferment of criminal charges by the Department of Justice, or engage in press conferences regarding the Firm's representation of its Clients.

II. FARA Analysis

FARA requires the registration of "agents of foreign principals" engaged within the United States in "political activities"⁴ or other specified activities. 22 U.S.C. § 611(c) & (o). Among the activities triggering registration are, within the United States, "representing the interests of a

³ The July 12 Letter provided additional details regarding the allegations and proceedings in the case. While not directly material to the substance of your request for an advisory opinion, the details did provide context for rendering an opinion.

⁴ Under FARA, 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).

foreign principal before an agency or official of the Government of the United States.” 22 U.S.C. §611(c)(1)(iv).

Even if agency under FARA is established, a foreign agent may qualify for one of the exemptions set out in 22 U.S.C. § 613. To that end, the Firm has asserted that it is entitled to the exemption set out at Section 613(g) (legal representation exemption). Pursuant to FARA’s implementing regulations, “[t]he 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.” 28 C.F.R. § 5.300.

The Clients are foreign principals pursuant to FARA, 22 U.S.C §611(b)(2) and (3), and the July 12 Letter acknowledges the requisite relationship between the Firm and the Clients necessary to establish agency under the statute. 22 U.S.C. § 611(c). In representing the Clients before the Department of Justice, relating to the settlement of the Pending U.S. Litigation and potential declination or deferment of criminal charges and engaging in other activities in support of that representation, the Firm would be acting as an “agent of a foreign principal” by “representing the interests of a foreign principal before an agency or official of the Government of the United States.” 22 U.S.C. (c)(1)(iv).

Therefore, absent an exemption, [Firm] would have an obligation to register under FARA for its representation of its Clients, and the Firm asserts that is should be exempt from registration because of the legal exemption set out at Section 613(g) of the Act.⁵ 22 U.S.C. § 613(g). That section exempts from registration:

Any person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, that for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.

22 U.S.C. § 613(g).

The July 12 Letter represents that the Firm would only engage with the Department of Justice and undertake ancillary activities directly in furtherance of obtaining a settlement of the Pending U.S. Litigation and potential declination or deferment of criminal charges. Further, the July 12 Letter represents that the Firm does not intend to undertake any lobbying activity, discussions or negotiations with any elected officials, discussions or negotiations with the media, or any public relations activities on behalf of its Clients in connection with the Pending U.S. Litigation. To that end, and as noted above, the Firm asserts that it will not engage with the media

⁵ [Firm] implicitly conceded that it was engaging in otherwise registrable activities by asserting that it should be exempt.

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in any manner (to include the issuance of press releases) regarding the Pending U.S. Litigation or any declination or deferment of criminal charges by the Department of Justice. If the Firm were to engage in press conferences or other media engagements to advance the Clients' interests outside of the proceedings or investigations involving the Clients, such activities might "go beyond the bounds of normal legal representation of [its] client's case and amount to efforts to influence public opinion," and, to the extent such efforts were to constitute political activities under the Act, the legal exemption would not apply. *See* H. Rep. 89-1470, p. 13.⁶

III. Conclusion

Accordingly, after reviewing your submission, and the representations on the scope of conduct therein, we do not contest your assertion that the Firm is exempt from registration pursuant to Section 613(g) of FARA for activities undertaken pursuant to its representation of its Clients in negotiations with the Department of Justice as described in the July 12 Letter.

Our opinion is limited to the specific facts outlined in the July 12 Letter. If any of the activities undertaken by the Firm with respect to its Clients depart in any way from those described in the July 12 Letter, please notify this office immediately, as the registration status of the Firm may change.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by telephone at (202) 233-0776 or by e-mail to FARA.Public@usdoj.gov if you have any questions.

Sincerely,

/s/Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

⁶ *See also* Frequently Asked Questions, What is the Exemption for Legal Representation?, available at <https://www.justice.gov/nsd-fara/frequently-asked-questions#21>.