



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 19, 2023

Via e-mail to [Redacted]
[Redacted]

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

Dear [Redacted]:

We write in response to your letter of February 16, 2023 (the “February 16 Letter”), as supplemented by your letter of April 14, 2023 and its attachments (collectively, the “April 14 Letter”)¹ requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to whether certain activities in the United States being performed by your client, [Foreign Government Organization], require registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq. (“FARA” or the “Act”).

The February 16 Letter asserts that the activities of [Foreign Government Organization] and other entities and persons described therein are exempt from registration pursuant to Sections 613(a), (b), and (c) of the Act.² Based on the facts stated in the February 16 Letter and the April 14 Letter, and for the reasons more fully stated herein, while we believe that certain individuals named in the April 14 Letter are exempt from FARA registration, we believe nevertheless that [Foreign Government Organization’s U.S. Subsidiary] and the individuals employed by it are in fact required to register under the Act.

Background

According to the February 16 Letter, [Foreign Government Organization]

supports the growth of [Foreign Nationality] companies in international markets, including the United States, and advises [Foreign Nationality] companies on their internationalization plans and actions. [Foreign Government Organization] also participates in conferences, panels, roadshows, and webinars with the goal of attracting foreign investment into [Foreign Nation] by identifying customers in key focus industry sectors and providing aftercare services to companies who have already established operations in [Foreign Nation]. [Foreign Government Organization] also communicates with local government entities in the United States to build strong relationships, shares best practices through participation in

¹ For purposes of citing to various portions of the April 14 Letter, we will treat the pages as consecutively numbered, [redacted].

² See, e.g., February 16 Letter at [redacted].

conferences, and coordinates exchanges between U.S. federal agencies and industry representatives in [U.S. City]³

(the “[Foreign Government Organization] Mission Statement”).

The April 14 Letter describes [Foreign Government Organization] and various related entities as follows:

[Foreign Government Organization] is a [Foreign Nationality] organization consisting of two separate legal entities; [Foreign Company], a [Foreign Nationality] limited liability company, which is one hundred (100%) percent owned by the [Foreign Government], and [Foreign Government Agency]. [Foreign Company] and [Foreign Government Agency] constitute one operational entity and are managed in accordance with a joint strategy by the [Foreign Government]. Specifically, [Foreign Company] is supervised and managed by [Foreign Government Agency], and [Foreign Government Agency], in turn, falls under the mandate and supervision of the [Foreign Government Ministry]. [Foreign Government Organization], including both [Foreign Company] and [Foreign Government Agency], is headquartered in [Capital of Foreign Nation].

[Foreign Government Organization’s U.S. Subsidiary] is one hundred (100%) percent owned by [Foreign Company]. [Foreign Government Organization’s U.S. Subsidiary]’s sole function is to support [Foreign Company] in its core functions in the United States.

[Foreign Government Organization’s U.S. Subsidiary] is a not-for-profit [U.S. State #1] corporation. [Foreign Government Organization’s U.S. Subsidiary]’s main office is in [U.S. City], [U.S. State #2] and it operates in the same premises as the [Foreign Consulate]. As described above, it is ultimately owned by the [Foreign Government].⁴

For purposes of the present analysis, we will use the defined terms [Foreign Company], [Foreign Government Agency], and [Foreign Government Organization’s U.S. Subsidiary] as established in the language quoted above.

[Foreign Company Unit] is described as “participat[ing] in activities which promote travel between [Foreign Nation] and the United States.”⁵ The April 14 Letter describes [Foreign Company Unit] as follows:

[Foreign Company Unit] is not a separate legal entity but, instead, is one of the functions within [Foreign Company].

³ *Id.* at [redacted].

⁴ April 14 Letter at [redacted].

⁵ February 16 Letter at [redacted].

...
[Foreign Company Unit] is arranged as a division (internally identified as a “unit”) within [Foreign Company]. The reporting line for [Foreign Company Unit] is as follows: The Head of [Foreign Company Unit] North America (based in [U.S. State #2]) leads all North American activities and reports to the Director of [Foreign Company Unit] International (based in [Foreign Capital], within [Foreign Company]), who in turn reports to the Senior Director, [Foreign Company Unit] (based in [Foreign Capital], within [Foreign Company]). Ultimately decision making authority is within the [Foreign Government Ministry].⁶

The April 14 Letter also states that [Foreign Company Unit], “[f]or the U.S. market, . . . engages an external agency to provide marketing and communication related services to [Foreign Company Unit]. This agency is the primary contact and consultant for all general marketing and communication related matters in the United States. The services provided include securing publicity coverage for [Foreign Company Unit] by contacting media outlets and proactively suggesting media content related to [Foreign Nation] based on annual plans defined by [Foreign Company]’s head office.”⁷

The April 14 letter lists four individuals working in the United States who are employed by [Foreign Company], have [Foreign Nationality] citizenship, and are accredited by the U.S. Department of State:

[Named Foreign Official #1], Head of Region: North America and President of [Foreign Government Organization]’s U.S. Subsidiary], is described as

Responsible for leading [Foreign Government Organization]’s employees, operations and financial matters in North America, the President of [Foreign Government Organization] manages service delivery for international growth and develops strategies and tactical plans to support sustainable development of the organization. Key responsibilities of the President of [Foreign Government Organization] include, *inter alia*: service and product development in export promotion, leading and developing customer relationships and portfolios, leading process and operational development projects, building national and international networks of support, and identifying market trends within the Region.⁸

[Named Foreign Official #2] is described as

Responsible for supporting the growth of [Foreign Nationality] companies in international markets, providing first-rates services for export organizations, and creating market opportunities. Key responsibilities of [Foreign Government Organization] [Job Title A] include, *inter alia*: developing strategies and procedures

⁶ April 14 Letter at [redacted].

⁷ *Id.* at [redacted].

⁸ February 16 Letter at [redacted].

for internationalization processes in local markets, analyzing local markets as it relates to international opportunities for expansion, and identifying market opportunities for [Foreign Nationality] and domestic companies within regional and industrial markets.⁹

[Named Foreign Official #3] is described as responsible for “[s]trengthen[ing] the technological and commercial ties between American and [Foreign Nationality] companies and research institutions involved with aviation, defense and other high tech industrial sectors.”¹⁰

[Named Foreign Official #3], Head of [Foreign Company Unit], North America, is described as

Responsible for managing and coordinating sales and promotion initiatives with international travel trade stakeholders. Key responsibilities of the Head of [Foreign Company Unit] Operations include, *inter alia*: organize trade events and workshops for [Foreign Nationality] travel companies in local markets, collect and share market insights and travel trends, and maintain close and active relationships with travel industry partners in the region and in [Foreign Nation].¹¹

The April 14 Letter states that “certain [Foreign Company] director/senior level employees working outside [Foreign Nation], including in the United States, have been accredited as diplomatic or consular officials. As such, the individuals listed . . . as having diplomatic and/or consular status shall therefore cooperate with the Mission.”¹² For purposes of the present analysis, we interpret this as referring in relevant part to [Named Foreign Official #1], [Named Foreign Official #2], [Named Foreign Official #3], and [Named Foreign Official #4].

The April 14 Letter lists [X] employees of [Foreign Government Organization’s U.S. Subsidiary] in the United States, who for privacy purposes are identified as “Employee No. 1” through “Employee No. [X].” All of these individuals have the title [Job Title A]. One of these individuals is a citizen of [Foreign Nation]; [Y] are citizens of other countries; and the remaining [Z] are either U.S. citizens or dual nationals of the United States and another country. None of these individuals are accredited by the U.S. Department of State (collectively, the “Non-Accredited Individuals”).¹³

The responsibilities of the Non-Accredited Individuals are described in the April 14 Letter as set forth below.

Employees No. 1 through [redacted]:

⁹ *Id.*

¹⁰ April 14 Letter at [redacted].

¹¹ February 16 Letter at [redacted].

¹² April 14 Letter at [redacted]. *See also id.* at [redacted].

¹³ *Id.* at [redacted].

- Manage [Foreign Nationality] customer cases
- Coach companies on how to do business in the market
- Discuss and give strategic advice to customers
- Build and maintain contact network towards decision makers and end customers in the market
- Relay HVC¹⁴ to customers from [own network/[Foreign Nation network]
- Analyze the local market and promote [Foreign Nationality] offering
- Strengthen internal [Foreign Government Organization] cooperation
- Act as a spokesperson for own industry area, incl. media promotion and external and internal presentations in the market and in [Foreign Nation]
- Compile professional reports/summaries to [Foreign Government Organization] and [Foreign Nation Network]
- Lead and guide activities of [Job Title B] when applicable
- Identify Market Opportunities in the market, validate applicability and relevance of the opportunity¹⁵

Employee No. [redacted]:

- Promote investments (FDI) from North America to [Foreign Nation].
- Proactively develop a network with potential target companies, listed corporations and other companies ready for international expansion
- Identify business expansion opportunities within the strong areas of [Foreign Nation].
- Work together with internal and external partners to assist the companies through the entire investment planning process
- Provide aftercare to companies who have already established operations in [Foreign Nation], and identify reinvestment potential

¹⁴ This acronym is not defined in the April 14 Letter. While we do not wish to speculate as to its meaning, we do not believe that it changes any of the conclusions that we express herein.

¹⁵ April 14 Letter at [redacted].

- Participate in or organize investment promotion events, e.g. roadshows, seminars¹⁶

Employee No. [redacted]:

- Boost the innovation collaboration and ecosystems building between [Foreign Nation] and the United States
- Identify and develop business ecosystem and innovation-based business opportunities
- Build partnerships between [Foreign Nationality] and American ecosystems, innovation organizations, programs and companies
- Cooperate closely internally and with [Foreign Nation Network], with the relevant [Foreign Nationality] Missions in the U.S. as well as cooperate with [Foreign Nation Regional Partners]
- Together with the colleagues across the world, develop and implement a partnership model to enable [Foreign Nationality] high potential ecosystems to reach new level in international collaboration and expansion, leading to international cocreation.¹⁷

Employee No. [redacted]:

- Insight creation on key change phenomena having impact on the [Foreign Nationality] economy and businesses
- Dissemination and exploitation of foresight results internally and to [Foreign Government Organization] stakeholders and clients
- Embedding foresight into [Foreign Government Organization] strategy, thematic and program work
- Foresight collaboration with partners, stakeholders and our clients
- Networking with relevant thought leaders, experts and partners
- Participates in [Foreign Nation Regional Partner] collaboration¹⁸

With respect to all of the above job descriptions, we interpret the various references to “in the

¹⁶ *Id.* at [redacted].

¹⁷ *Id.* at [redacted].

¹⁸ *Id.* at [redacted].

market” or “the local market” to be references to the United States.

The April 14 Letter also states that “[a]ny informational and/or promotional materials related to [Foreign Government Organization] are created, published and/or disseminated primarily by [Foreign Company]’s head office in [Foreign Capital].” [Foreign Company] is also described in the April 14 Letter as managing various websites and newsletters in [Foreign Nation], “although the materials may be produced outside of [Foreign Nation], including by staff working for [Foreign Company] in the U.S. Information related to local activities may also be created locally by [Foreign Government Organization]’s U.S. Subsidiary] and by [Foreign Company] staff in the United States.”¹⁹

FARA Analysis

As you are aware, the term “foreign principal” is defined by the Act to include, in relevant part, “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 county.”²⁰ As described in the April 14 Letter and as quoted above, [Foreign Company] is “a [Foreign Nationality] limited liability company which is one hundred (100%) percent owned by the [Foreign Government].”²¹ As such, [Foreign Company] is clearly a foreign principal for purposes of the Act.

Generally speaking, a person²² is an “agent of a foreign principal” and must register under FARA if such person is “an agent, representative, employee, or servant, or . . . acts in any other capacity at the order, request, or under the direction or control, of a foreign principal” and engages in one of the enumerated activities triggering registration.²³ These activities include, in relevant part, “engag[ing] within the United States in political activities for or in the interests of such foreign principal” or “act[ing] within the United States as a public relations counsel, publicity agent, [or] information-service employee . . . for or in the interests of such foreign principal[.]”²⁴ As described in the April 14 Letter and as quoted above, [Foreign Government Organization]’s U.S. Subsidiary], a [U.S. State #1] corporation with its principal place of business in [U.S. City], [U.S. State #2], “is one hundred (100%) percent owned by [Foreign Company]. [Foreign Government Organization]’s U.S. Subsidiary]’s sole function is to support [Foreign Company] in its core functions in the United States.”²⁵ [Foreign Government Organization]’s U.S. Subsidiary] is therefore clearly an agent of a foreign principal, [Foreign Company], for purposes of the Act.

¹⁹ *Id.* at [redacted].

²⁰ 22 U.S.C. § 611(b)(3).

²¹ April 14 Letter at [redacted].

²² The Act defines “person” to include “an individual, partnership, association, corporation, organization, or any other combination of individuals[.]” 22 U.S.C. § 611(a).

²³ 22 U.S.C. § 611(c)(l).

²⁴ 22 U.S.C. § 611(c)(l)(iv).

²⁵ April 14 Letter at [redacted].

The Act defines “political activities” in relevant part 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 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[.]²⁶

The [Foreign Government Organization] Mission Statement, which [Foreign Government Organization’s U.S. Subsidiary] furthers in the United States, contemplates political activities as defined in the Act. As stated in the February 16 Letters and as quoted above,

[Foreign Government Organization] . . . participates in conferences, panels, roadshows, and webinars with the goal of attracting foreign investment into [Foreign Nation] by identifying customers in key focus industry sectors and providing aftercare services to companies who have already established operations in [Foreign Nation]. [Foreign Government Organization] also communicates with local government entities in the United States to build strong relationships, shares best practices through participation in conferences, and coordinates exchanges between U.S. federal agencies and industry representatives in [U.S. City].²⁷

None of the exemptions available pursuant to Section 613 of the Act apply to the political activities of [Foreign Government Organization’s U.S. Subsidiary]. Section 613(d) provides, in relevant part, that 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” (emphasis added).²⁸ Section 5.304(a) of the FARA Regulations further clarifies this language: “As used in section [613(d)], the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind” (emphasis in the original).²⁹

According to the [Foreign Government Organization] Mission Statement, [Foreign Government Organization] “supports the growth of [Foreign Nation] companies in international markets, including the United States,” and also has “the goal of attracting foreign investment into [Foreign Nation][.]”³⁰ This seems to be the quintessentially “public” mission of the [Foreign Government] in facilitating international trade by [Foreign Nationality] companies and soliciting interest among companies in the United States to either export goods to, or engage in foreign direct investment in, [Foreign Nation]. While [Foreign Government Organization] and [Foreign

²⁶ 22 U.S.C. § 611(o).

²⁷ February 16 Letter at [redacted].

²⁸ 22 U.S.C. § 613(d).

²⁹ 28 C.F.R. § 5.304(a).

³⁰ February 16 Letter at [redacted].

Company] may be seeking to promote “the bona fide trade or commerce” of [Foreign Nationality] private companies, neither [Foreign Government Organization] nor [Foreign Company] themselves appear on their own behalf to be engaging in trade or commerce—*i.e.*, “the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.”³¹ The exemption stated in Section 613(d)(1) of FARA therefore does not apply to the activities of [Foreign Government Organization], [Foreign Company], or as carried out in the United States by their agent, [Foreign Government Organization’s U.S. Subsidiary].

By similar reasoning, the exemption in Section 613(d)(2) also does not apply because the [Foreign Government Organization] Mission Statement, as facilitated in the United States by [Foreign Government Organization’s U.S. Subsidiary], does in fact “serv[e] predominantly a foreign interest,”³² *i.e.*, the general public interest of the government of [Foreign Nation] in the growth of the country’s foreign trade and exports and foreign direct investment in [Foreign Nation] by, in relevant part, U.S. companies.

[Foreign Government Organization’s U.S. Subsidiary] will therefore need to register under the Act, since it is engaging in political activities in the United States on behalf of its foreign principal, [Foreign Company], and none of the exemptions available under the Act apply.

The Act does, however, exempt from FARA registration “Diplomatic or consular officers,” which are defined as any “duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer[.]”³³ As noted above, we interpret the April 14 Letter to mean that [Named Foreign Official #1], [Named Foreign Official #2], [Named Foreign Official #3], and [Named Foreign Official #4] have diplomatic and/or consular status at the [Foreign Consulate] in [U.S. City], [U.S. State #2].

The Vienna Convention on Consular Relations recognizes “consular functions” as including “furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;” and “ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested[.]”³⁴ We do not contest the assertion in the February 16, 2023 Letter and the April 14 Letter that the activities in the United States of [Named Foreign Official #1], [Named Foreign Official #2], and [Named Foreign Official #3], on behalf of [Foreign Government Organization], and [Named Foreign Official #4], on behalf of [Foreign Company Unit], are not subject to FARA registration, as all four individuals are diplomatic or consular

³¹ 28 C.F.R. § 5.304(a).

³² 22 U.S.C. § 613(d)(2).

³³ 22 U.S.C. § 613(a).

³⁴ Vienna Convention on Consular Relations, 1963, Article 5(b), (c), *available at* https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

officers of the government of [Foreign Nation] and are exempt from registration under the Act pursuant to Section 613(a).

The Non-Accredited Individuals, however, do not qualify for exemption from the Act under Section 613(a), “Diplomatic or consular officers;”³⁵ Section 613(b), “Officials of foreign government;”³⁶ or Section 613(c), “Staff members of diplomatic or consular officers.”³⁷ Based on the April 14 Letter,³⁸ they are clearly not “duly accredited diplomatic or consular officer(s) . . . so recognized by the Department of State”³⁹ and thus fall outside the exemption in Section 613(a). They are also not individuals “whose name and status and the character of whose duties . . . are of public record in the Department of State,”⁴⁰ which would by itself remove them from the exemptions in Sections 613(b) and (c). Those exemptions also do not extend to anyone functioning as a public-relations counsel, publicity agent, or information-service employee as defined in the Act.⁴¹ For the reasons more fully set forth below, [Foreign Government Organization’s U.S. Subsidiary] is an agent of a foreign principal for purposes of the Act, and the activities of it and the Non-Accredited Individuals, as employees of [Foreign Government Organization’s U.S. Subsidiary] acting in the United States in furtherance of the [Foreign Government Organization] Mission Statement, are subject to FARA registration.

The Non-Accredited Individuals will also need to register under FARA (as short-form registrants pursuant to [Foreign Government Organization’s U.S. Subsidiary]’s registration), since they each appear to be functioning as a public-relations counsel and/or an information-service employee for purposes of the Act.

The Act defines a “public relations counsel” as “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal[.]”⁴² and an “information-service employee” in relevant part as “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country[.]”⁴³

³⁵ 22 U.S.C. § 613(a).

³⁶ 22 U.S.C. § 613(b).

³⁷ 22 U.S.C. § 613(c).

³⁸ See April 14 Letter at [redacted].

³⁹ 22 U.S.C. § 613(a).

⁴⁰ See 22 U.S.C. § 613(b), (c).

⁴¹ *Id.* The exemption in Section 613(b) also does not extend to anyone who is a citizen of the United States, which would by itself disqualify from that exemption [Z] of the [X] Non-Accredited Individuals.

⁴² 22 U.S.C. § 611(g).

⁴³ 22 U.S.C. § 611(i).

As listed in the April 14 Letter and as quoted above, various elements of the job descriptions of the Non-Accredited Individuals support such individuals' characterization as public-relations counsel and/or information-service employees for purposes of the Act.

We also note that [Foreign Company] is described in the April 14 Letter as managing various websites and newsletters in [Foreign Nation], "although the materials may be produced outside of [Foreign Nation], including by staff working for [Foreign Company] in the U.S. Information related to local activities may also be created locally by [Foreign Government Organization's U.S. Subsidiary] and by [Foreign Company] staff in the United States."⁴⁴ Although the individuals engaging in these activities are not identified, this would further reinforce the conclusion that any of the Non-Accredited Individuals so engaging must register under FARA. Although it is not possible to say given the brevity of the description of these activities, any Non-Accredited Individuals engaging in these activities may also qualify as "publicity agents" under the Act.⁴⁵

As discussed above, none of the Non-Accredited Individuals qualify for exemption from FARA registration pursuant to Section 613(a), (b), or (c). All of the Non-Accredited Individuals will need to register under the Act. Please keep in mind that "each partner, officer, director, associate, employee, and agent of a registrant [*i.e.*, of [Foreign Government Organization's U.S. Subsidiary]] is required to file a registration statement under the Act. . . . [T]his obligation may be satisfied by the filing of a short form registration statement."⁴⁶

Please complete the registration process for [Foreign Government Organization's U.S. Subsidiary] and, as short-form registrants, the Non-Accredited Individuals within 30 days of the date of this letter.

The present advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of the Act and its regulations. If there are any changes in the facts and circumstances you related to us, you should contact us immediately.

Separately, while we cannot offer an advisory opinion with respect to third parties, we note that, as described in the April 14 Letter and as quoted above, [Foreign Government Organization] "[f]or the U.S. market, . . . engages an external agency to provide marketing and communication related services to [Foreign Company Unit]."⁴⁷ This external agency may have its own obligation to register under the Act, and we encourage you to discuss this with the external agency.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this

⁴⁴ [Redacted].

⁴⁵ 22 U.S.C. § 611(h) defines a "publicity agent" as "any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise[.]"

⁴⁶ 28 C.F.R. § 5.202(a).

⁴⁷ April 14 Letter at [redacted].

[Redacted]
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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