



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

February 23, 2024

Via E-mail

[Requestor]

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

Dear [Requestor]:

We write in response to your letter of July 24, 2023 (the “July 24 Letter”) requesting an advisory opinion pursuant to 28 C.F.R. § 5.2 – which you supplemented by letter on December 26, 2023 (the “December 26 Letter”) – concerning whether your law firm, [Law Firm] , 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”), as an agent of [Corporation A]. Based on the representations in the July 24 Letter and its attachments, including those concerning the scope of [Law Firm]’s legal advocacy, the representations in the December 26 Letter, and for the reasons stated more fully herein, we conclude that [Law Firm] is not required to register under FARA for its proposed legal representation of [Corporation A] regarding state-level investigations, enforcement inquiries, and judicial and agency proceedings in connection with its government and related supplier contracts in [State].

I. Background

The July 24 Letter describes [Corporation A] as a U.S. [redacted] manufacturer headquartered in [state]. The July 24 Letter informs us that [Law Firm] has been retained by [Corporation A] to provide “legal advice and legal representation regarding investigations or enforcement inquiries, if any, and judicial and agency proceedings in connection with its government contracts in [three U.S. states] and related supplier contracts.”¹ Attached to the July 24 Letter is a copy of a June 22, 2023 engagement letter between [Law Firm] and [Corporation A], which confirms the scope of work as described in the letter.

In the December 26 Letter, the engagement letter and the specific activities contemplated by [Law Firm] pursuant thereto were amended to reflect that [Law Firm] will be acting on behalf of [Corporation A] when it engages in representing the interests of [Corporation A] with respect to

¹ July 24 Letter at 1.

investigations or enforcement inquiries and related judicial and agency proceedings in connection with [Corporation A]’s government contract with [state agency].²

II. FARA Analysis

The term “foreign principal” is defined by FARA 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 country.”³

Generally speaking, a person⁴ is an “agent of a foreign principal” under FARA if such person 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, [or] controlled . . . by a foreign principal, and who directly or through any other person,” engages in certain enumerated activities within the United States.

Here, the engagement letter indicates that [Corporation A] is a U.S. corporation incorporated in [state] and is a subsidiary of and majority owned by a [foreign country] -based corporation that is publicly traded and listed on [foreign city] Stock Exchanges. Thus, under FARA, [Corporation A] is subject to the control of a “foreign principal” – its foreign parent corporation.⁵

According to the engagement letter, the July 24 Letter, and the December 26 Letter, [Law Firm] will be acting on behalf of [Corporation A] when it engages in representing the interests of [Corporation A] with respect to investigations or enforcement inquiries and related judicial and agency proceedings in connection with its government contract with the [state agency]. Specifically, you have represented that [Law Firm]’s activities are limited to (1) responding to a document summons from the [State’s] Office of Inspector General and (2) providing legal services to [Corporation A] in the course of negotiations with [state agency]’s outside counsel over the terms of a contract change order relating to an existing contract for the production of [redacted].⁶ The July 24 Letter further represents that [Law Firm] “does not intend to undertake any lobbying activity, discussions or negotiations with any elected officials, discussions or

² December 26 Letter at 1.

³ 22 U.S.C. § 611(b)(3).

⁴ The Act defines “person” to include “an individual, partnership, association, corporation, organization, or any other combination of individuals[.]” 22 U.S.C. § 611(a).

⁵ See 28 C.F.R. § 5.100(b) (“As used in the Act, 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 the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.”).

⁶ See *supra* note 2, at 2.

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negotiations with the media, or any public relations activity on behalf of [Corporation A] in connection with the scope of work described above.”⁷

Although the July 24 Letter and the engagement letter acknowledge that [Law Firm] is acting on behalf of [Corporation A], the Act imposes a more specific definition of agency. Under FARA, an “agent of a foreign principal” is a person “who directly or through any other person” engages in political activities, acts as a public relations counsel, publicity agent, information-service employee, or political consultant, or within the United States “represents the interests of such foreign principal before any agency or official of the Government of the United States[,]” among other things. Importantly, the term “Government of the United States” refers to the federal government and does not include state governments.

Accordingly, based on the information you provided, we do not believe that [Law Firm]’s planned activities require registration under FARA. In the December 26 Letter, you represented that [Law Firm] plans to represent [Corporation A]’s interests in (1) responding to a document summons from the [State] Office of Inspector General and (2) providing legal services to [Corporation A] in the course of negotiations with [state agency]’s outside counsel over the terms of a contract change order relating to an existing contract for the production of [redacted]. Neither of these activities appear to fall within the categories of activities that require registration under FARA. As a result, we conclude that [Law Firm] need not register under the Act for its planned representation of [Corporation A] in these matters.

Please note that any change in the facts and circumstances represented to us in the July 24 and December 26 Letters may change [Law Firm]’s status and may require it to register. If any such change does occur, you should contact us immediately. The present advisory opinion is expressly limited to the facts and conclusions stated herein.

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/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

⁷ See *supra* note 1, at 2.