



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 14, 2023

Via E-mail

[Name]

[Address]

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

Dear [Person]:

We write in response to your letter dated July 31, 2023 (the “July 31 Letter”),¹ requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to your obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with certain proposed activities of [Company 1], on behalf of [Company 2]. Based upon the representations in your letter and the proposed contract you provided, we have concluded that [Company 1] would qualify for the exemption under Section 613(h) of the Act once it has filed a valid Lobbying Disclosure Act² (“LDA”) registration for its representation of [Company 2].

I. Background

According to the July 31 Letter, [Company 1] is a lobbying firm, currently registered under the LDA as to other clients, that is considering entering into a contractual agreement with [Company 2], a U.S.-based [company] producer with its principal place of business in [U.S. place]. The July 31 Letter describes [Company 2] as a joint venture between [foreign public pension manager] and [Company 3].³ You describe [Company 3] “a U.S.-based/owned [redacted],” but clarify that the majority investment in [Company 2] is provided by [foreign public pension manager]. According to the July 31 Letter, [foreign public pension manager] is a publicly owned [foreign government corporation] that is governed by an internal board but overseen by the [public sector government investment board].⁴ The July 31 Letter further describes [foreign public pension manager’s] investment in [Company 2] as a “private equity, [redacted]” sector investment, and notes that [Company 2] is managed by an internal U.S.-based executive group, which, together with representatives of [foreign public pension manager] and [Company 3], forms [Company 2’s] managing board.

¹ On August 15, 2023, you provided a copy of the proposed agreement between [Company 1] and [Company 2]

² 2 U.S.C. § 1601 *et seq.*

³ [Redacted].

⁴ According to an official website of [foreign government], the [public sector government investment board] is part of the [foreign] government tasked with [managing public sector employer and employee contributions].

The July 31 Letter states that [Company 1] intends to lobby Congress and the Executive Branch on behalf of [Company 2] on matters related to [redacted]. As a result, you suggest in the July 31 Letter that [Company 1's] proposed activities would be subject to registration and reporting under the LDA. You further note that you plan to interface with [Company 2] executives and managers based in [redacted] on those issues and do not anticipate any direct interaction with [foreign public sector investment manager] or [public sector government investment board]. You further contend that the proposed work will be for the exclusive benefit of [Company 2] [its] interests located in [United States].

You request an advisory opinion as to whether [Company 1] is required to register under FARA for the proposed activities. Based on the information you provided, we are of the opinion that [Company 1] would not have to register under FARA for the proposed activities as long as it complies with, and therefore qualifies for, the exemption set forth in 22 U.S.C. § 613(h) for agents who register under the LDA.

II. FARA Analysis

A person is an “agent of a foreign principal” and must register 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, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” engages in one of the enumerated activities requiring registration.⁵ Among the activities requiring registration are engaging in “political activities”⁶ and “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.”⁷ The term “foreign principal” is defined as including “a government of a foreign country and a foreign political party . . . 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.”⁸

[Foreign public pension manager], as a [foreign] corporation, qualifies as a foreign principal for purposes of the Act. Likewise, [public sector government investment board], as an instrumentality of [foreign government], is also a foreign principal for purposes of FARA.

Thus, evaluating whether a person⁹ is an agent of a foreign principal required to register under FARA is a two-part inquiry, exploring (1) the nature of the relationship between the agent and the foreign principal, that is, whether there is evidence that the agent is acting directly or indirectly at

⁵ See 22 U.S.C. § 611(c)(1).

⁶ 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 a foreign political party.” 22 U.S.C. § 611(o).

⁷ 22 U.S.C. § 611(c)(1)(i) and (iv).

⁸ 22 U.S.C. § 611(b).

⁹ “The term ‘person’ includes an individual, partnership, association, corporation, organization, or any other combination of individuals.” 22 U.S.C. § 611(a).

the order, request, direction, or control of the foreign principal and (2) whether the agent has performed one of the enumerated activities within the United States for or in the interests of the foreign principal.¹⁰ In this instance, if [Company 1's] activities satisfy both elements of the inquiry, an obligation to register may exist.

[Company 1's] relationship with [public sector investment manager] and [public sector government investment board] suggests that some measure of indirect control of [Company 1] by a foreign principal may exist. FARA's implementing regulations construe "control" broadly, to include "the possession or the exercise of 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."¹¹ According to the July 31 Letter and as noted above, [Company 1] intends to enter into a contract with [Company 2], which is majority owned by [public sector pension manager], a foreign corporation that is subject to control by the [public sector government investment board], an instrumentality of [foreign government]. The July 31 Letter further notes that [Company 1] does not anticipate any direct interaction with [public sector investment manager] or the [public sector government investment board] in the course of performing the proposed activities, which you assert are exclusively for the benefit of [Company 2] and [other] interests.

The activities [Company 1] would perform subject to the contract would, in the ordinary course, require registration under FARA. These activities—lobbying, specifically—require registration because (1) lobbying satisfies the Act's definition of "political activities,"¹² and (2) [Company 1] intends to represent, albeit indirectly, the interests of a foreign principal before an agency of the United States.¹³

However, even if agency under FARA is established, an agent of a foreign principal may still qualify for one of the exemptions set out in 22 U.S.C. § 613. The burden of establishing an exemption "shall rest upon the person for whose benefit the exemption is claimed."¹⁴

Section 613(h) provides an exemption from registration where an agent representing a foreign person or entity "has engaged in lobbying activities and has registered under the [LDA] in connection with the agent's representation of such person or entity."¹⁵ FARA's implementing regulations cabin the scope of the exemption, stating, "In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized."¹⁶

The July 31 Letter asserts that [Company 1] intends to provide lobbying services to [Company 2], a company located in [United States]. As described above, [public sector pension manager] owns a majority share of [Company 2] and is, in turn, owned by [public sector government investment board], an instrumentality of [foreign government]. While the [foreign government] may receive

¹⁰ 22 U.S.C. § 611(c)(1).

¹¹ 28 C.F.R. § 5.100(b).

¹² See fn. 6, *supra*.

¹³ 22 U.S.C. § 611(c)(1)(iv).

¹⁴ 28 C.F.R. § 5.300.

¹⁵ 22 U.S.C. § 613(h).

¹⁶ 28 C.F.R. § 5.307.

[Name]
September 14, 2023
Page 4

an indirect benefit from [Company 1's] activities, those activities appear primarily intended to advance [Company 2's] business interests. Moreover, the [foreign government's] investment in [Company 2] appears to be one of many diverse investments made on behalf of [foreign country's] public sector investment funds. Under these facts, it does not appear to us that the [foreign government] would be the "principal beneficiary" of [Company 1's] proposed activities.¹⁷

Accepting your representations as true and accurate, we concur that the LDA exemption applies to the activities described in the July 31 Letter.

Please note that [Company 1's] entitlement to the LDA exemption is contingent upon it filing a registration under the LDA for the conduct described in the July 31 Letter. Further, this advisory opinion is based entirely upon and limited to the facts set out in the July 31 Letter. Should any of the facts and/or circumstances described in the July 31 Letter change in any way, please notify the FARA Unit as we may have to revisit our determination.

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

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

¹⁷ *Id.*