



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 27, 2023

**Via E-mail**

[Name]

[Address]

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

Dear [Name]:

We write in response to your November 29, 2023, e-mail<sup>1</sup> requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to the obligation of [U.S. Firm] 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 [U.S. Firm] on behalf of [Foreign Corporation]. Based upon the representations in your e-mail and the materials you provided, we do not oppose your assertion that [U.S. Firm] qualifies for the exemption from registration pursuant to Section 613(h) of the Act.

**I. Background**

According to the November 29 e-mail, [Foreign Corporation] is a private company based in [Foreign Country].<sup>2</sup> On October 11, 2023, [U.S. Firm] entered into a contract with [Foreign Corporation].<sup>3</sup> The contract notes that “[Foreign Corporation] is engaged in international trade and faces issues related to Customs and Border Protection (“CBP”) compliance and regulations[.]”<sup>4</sup> Under the contract, “[U.S. Firm] shall provide consulting and advisory services to [Foreign Firm] related to issues before U.S. Customs and Border Protection agency, including but not limited to compliance matters, regulatory issues, and dispute resolution.”<sup>5</sup>

You ask whether [U.S. Firm] is required to register under FARA and whether it is entitled to the exemption for Lobbying Disclosure Act (LDA) registrants set out at 22 U.S.C. § 613(h).<sup>6</sup>

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<sup>1</sup> [Redacted]

<sup>2</sup> [Redacted]

<sup>3</sup> [Redacted]

<sup>4</sup> [Redacted]

<sup>5</sup> [Redacted]

<sup>6</sup> Section 613(h) of the Act provides an exemption for “[a]ny agent of a person described in section 611(b)(2) of this title or section 611(b)(3) of this title if the agent has engaged in lobbying activities and has registered under the

## II. FARA Analysis

A person is an “agent of a foreign principal” who, absent an exemption, 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” and engages in one of the enumerated activities requiring registration.<sup>7</sup> Among the activities requiring registration are engaging in “political activities”<sup>8</sup> and “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.”<sup>9</sup>

The term “foreign principal” is defined by FARA to include “a partnership, association, corporation, organization, or any other combination of persons organized under the laws of or having its principal place of business in a foreign country.”<sup>10</sup> According to this definition, [Foreign Corporation], as a corporation organized and operated in [foreign country], is a foreign principal for the purposes of FARA.

Evaluating whether a person<sup>11</sup> 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 the order, request, or under the 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.<sup>12</sup> If [U.S. Firm’s] proposed activities satisfy both elements of the inquiry, an obligation to register may exist unless an exemption applies.

As to the first part of the inquiry, the contract submitted with your November 29 e-mail provides ample evidence of direction and control over [U.S. Firm’s] activities by [Foreign Corporation]. FARA’s implementing regulations construe “control” broadly, to include “the possession or the

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Lobbying Disclosure Act of 1995 [2 U.S.C. § 1601 et seq.] in connection with the agent’s representation of such person or entity.”

<sup>7</sup> See 22 U.S.C. § 611(c)(1).

<sup>8</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 a foreign political party.” 22 U.S.C. § 611(o).

<sup>9</sup> 22 U.S.C. § 611(c)(1)(i) and (iv).

<sup>10</sup> 22 U.S.C. § 611(b)(3).

<sup>11</sup> “The term ‘person’ includes an individual, partnership, association, corporation, organization, or any other combination of individuals.” 22 U.S.C. § 611(a).

<sup>12</sup> 22 U.S.C. § 611(c)(1).

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.”<sup>13</sup> In the instant case, the contract entitles [U.S. Firm] to receive a monthly fee of \$15,000 in exchange for enumerated services for the benefit of [Foreign Corporation] for a period of 90 days.

As to the second part of the inquiry—the planned activities—[U.S. Firm’s] contract specifies, among other things, that [U.S. Firm] will advocate on [Foreign Firm]’s behalf before CBP. This activity appears to fall under Section 611(c)(1)(iv) of the Act because [U.S. Firm] would be “within the United States represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.”<sup>14</sup>

However, even when 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.”<sup>15</sup>

Section 613(h) provides an exemption from registration where an agent representing certain categories of foreign principals, including foreign corporations, “has engaged in lobbying activities and has registered under the [LDA] in connection with the agent’s representation of such person or entity.”<sup>16</sup> 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.”<sup>17</sup> In this case, [Foreign Corporation] is a private commercial entity and a foreign government or foreign political party does not appear to be the principal beneficiary of [U.S. Firm’s] activities.

We note that along with your November 29 e-mail requesting an advisory opinion, you provided a copy of a valid LDA registration documenting [U.S. Firm’s] representation of [Foreign Corporation] with an effective date of [Redacted].<sup>18</sup> The registration appears to cover the activities described in the contract submitted with your request for an advisory opinion. Accepting your representations and documentation as true and accurate, we do not oppose your assertion that the LDA exemption in Section 613(h) applies to the activities described in the November 29 e-mail.

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<sup>13</sup> 28 C.F.R. § 5.100(b).

<sup>14</sup> 22 U.S.C. § 611(c)(1)(iv). Because [U.S. Firm’s] activities qualify for the LDA exemption, we need not reach a conclusion about whether [U.S. Firm] will be engaging in political activities, as defined by the Act. *See* 28 C.F.R. § 5.100(e) (noting that FARA’s definition of political activities “do[es] not include making a routine inquiry of a government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question”).

<sup>15</sup> 28 C.F.R. § 5.300.

<sup>16</sup> 22 U.S.C. § 613(h) (referencing the categories of foreign principals defined in 22 U.S.C. § 611(b)(2) and (3)).

<sup>17</sup> 28 C.F.R. § 5.307.

<sup>18</sup> LD-1 Lobbying Registration [Redacted].

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This advisory opinion is based entirely upon and limited to the facts set out in the November 29 e-mail and attached materials. Should any of the facts and/or circumstances described to us change in any way, please notify the FARA Unit immediately as our opinion may change.

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](mailto:FARA.Public@usdoj.gov) if you have any questions.

Sincerely,

*/s/ Evan N. Turgeon*

Evan N. Turgeon  
Chief, FARA Unit