U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

July 22, 2024

Via E-mail

[Requestor]
[Requestor's address]

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

Dear [Requestor]:

We write in response to your letter of May 14, 2024 (the "May 14 Letter"), received by this office on May 28, 2024, requesting an advisory opinion pursuant to 28 C.F.R. § 5.2 concerning whether you have 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"), for your activities undertaken for [foreign government agency] in your position as the Deputy Administrator [redacted], a position you have started as of May 27, 2024. Based on the representations in the May 14 Letter and its attachments, including the offer letter and job description, as well as the additional information provided at our request in your email of June 20, 2024 ("June 20 Email"), and for the reasons stated more fully herein, we conclude that you are required to register under FARA for your activities for [foreign government agency].

I. Background

The May 14 Letter informed us that you received an offer letter and have accepted as of May 27, 2024, the position as the Deputy Administrator of [redacted] for [Foreign Government Agency]. The May 14 Letter also attached the job description, which sets forth several activities the position requires you to perform. According to the job description, you are the head of [redacted] and are responsible for "generalizing, managing and coordinating all the [redacted][1] The job description further provides a detailed description of the duties and responsibilities expected for each of these directorates.[2] In the May 14 Letter, you informed us that "[i]n addition to what is written in the job description, [you] will be representing [foreign government agency] to promote international [redacted] collaboration with various [redacted] related agencies around the globe, including [U.S. government agencies]."[3] You further indicate that your work for [foreign government agency] will

[1] *See* [Foreign Government Agency] Recruitment-Job Description at 1.

[2] *Id*. at 2.

[3] May 14 Letter at 1.

officially begin on May 27, 2024, when [foreign government agency] begins its operations in [foreign country].[4]

In the June 20 email, you disclosed at our request that you are a citizen only of the United States, and that, although your work occurs primarily in [foreign country], it also may take you occasionally to the United States and other countries to promote [redacted] and research and development ("R&D") collaborations with [other foreign government agencies] that are involved in [redacted] research and other R&D activities.[5] You also disclosed that your representation of [foreign government agency] in collaboration with [U.S. government agencies] is focused on [redacted] and R&D matters.[6] Your responsibilities include formulating and developing the [foreign government's] public policy for [research], as well as developing public-private partnerships similar to [U.S. government agency's] partnerships with [private companies].[7] Your responsibilities will also involve promoting the economic development of small and medium-sized [redacted] companies in [foreign country] and promoting economic ties between [foreign country's] companies and foreign companies, including those in the United States.[8]

FARA Analysis

The term "foreign principal" is defined by FARA to include, in relevant part, "a government of a foreign country" 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."[9] You have entered into an agreement with [foreign government agency], an organization organized by the laws of the [foreign country], which is an agency of the [foreign country]. [foreign government agency] thus qualifies as a "foreign principal" under FARA.

Under FARA, a party is an "agent of a foreign principal" if it 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," in pertinent part:

> (i) engages within the United States in political activities for or in the interests of such foreign principal; [or]

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[4] *Id.*

[5] June 20 Email at 1.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 22 U.S.C. § 611(b)(1), (3).

> (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.][10]

The Act defines "political activities" 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 or a foreign political party.[11]

The May 14 Letter and the offer letter clearly establish that you have entered into an agreement to act on behalf of [foreign government agency] and to perform activities under [foreign government agency's] direction and control. You therefore have an agency relationship with [foreign government agency], as defined by the Act. Your position as the Deputy Administrator [redacted] for [foreign government agency] entails that, among other things, you will represent [foreign government agency] by promoting international [redacted] collaboration with various [redacted] agencies around the globe, including [U.S. government agencies]. If your promotion of [redacted] collaboration with [U.S. government agencies] occurs in the United States—as your letters suggest it may—such activity would constitute political activities for or in the interests of [foreign government agency] and representing [foreign government agency] before an agency or official of the United States and would require registration absent an exemption.[12]

In addition, in the May 14 letter, you disclosed that your position will also involve developing public-private partnerships like [U.S. government agency's] partnerships with [private companies], promoting economic development of small and medium-sized [redacted] companies in [foreign government], and promoting economic ties between [foreign country's] companies and foreign companies, including those in the United States. The efforts to promote public-private partnerships between [foreign government agency] and companies in the United States are considered to be "political activities" under FARA because the activities seek to influence a section of the U.S. public with reference to the political or public interests, policies, or relations of a government of a foreign country, [foreign country].[13] Thus, this activity would likewise require registration under FARA absent an exemption.

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[10] 22 U.S.C. § 611(c)(1)(i) and (iv). *See also* 22 U.S.C. § 611(c)(2) (including in the definition of "agent of a foreign principal" "any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal").

[11] 22 U.S.C. § 611(o).

[12] 22 U.S.C. § 611(c)(1)(i) and (iv).

[13] 22 U.S.C. § 611(c)(1)(i), (o).

We next turn to whether you qualify for any exemption. There is an exemption for certain "official[s] of a foreign government."[14] Although you serve as Deputy Administrator [redacted] for [foreign government agency], this exemption is not available to citizens of the United States such as yourself.[15] You therefore do not qualify for this exemption.

FARA also provides an exemption for "engaging or agreeing to engage *only* in activities in furtherance of bona fide . . . scientific pursuits."[16] But while some of your activities are scientific in nature, your work also includes political activities, rendering this exemption unavailable as well.[17]

Finally, FARA has an exemption for "private and nonpolitical activities" that are "in furtherance of the bona fide trade or commerce of such foreign principal."[18] However, in addition to promoting the economic development of [foreign country's] [redacted] companies, you also plan to promote public-private partnerships between U.S. companies and [foreign government agency] itself. Because these activities relate to the political or public interests, policies, or relations of a foreign government, [foreign government], they too constitute "political activities."[19] You therefore would not qualify for this exemption.

Because you have agreed to perform the above-described activities on behalf of [foreign government agency], you are required to register under FARA. Please complete your registration within 10 days of the date of this opinion. Useful information and forms may be obtained on the FARA Unit's website, located at https://www.justice.gov/nsd-fara. If you have any questions regarding this matter, please contact the FARA Unit by e-mail at FARA.Public@usdoj.gov or by telephone at (202) 233-0776.

Sincerely,

/s/ Evan N. Turgeon

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[14] 22 U.S.C. § 613(b).

[15] *See* 22 U.S.C. § 613(b) (providing an exemption from registration for "any official of a foreign government . . . who is not . . . a citizen of the United States").

[16] 22 U.S.C. § 613(e) (emphasis added).

[17] *See* 28 C.F.R. § 5.304(d) ("The exemption provided by section 3(e) of the Act shall not be available to any person described therein if he engages in political activities as defined in section 1(o) of the Act for or in the interests of his foreign principal.).

[18] 22 U.S.C. § 613(d)(1).

[19] *See* 28 C.F.R. § 5.304(b) (noting that actions of an agent of a foreign principal "in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered 'private,' even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government").

Evan N. Turgeon
Chief, FARA Unit