



## U.S. Department of Justice

### National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 10, 2024

#### **Via E-mail**

[Requestor]

[Foreign Address]

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

Dear Mr. Minister,

We write in response to your July 16, 2024, e-mails requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), on whether you must register as an “agent of a foreign principal” under the Foreign Agents Registration Act (“FARA” or “the Act”) of 1938, as amended, 22 U.S.C. § 611 *et seq.* Your e-mails explain that in your capacity as head of the branch of [Foreign Country’s] government that promotes economic growth, you will be involved in representing that country’s interests before U.S. officials and private-sector persons in the United States. Based on the representations in your e-mails, and for the reasons discussed below, we have determined that you would be obligated to register for the proposed activities if you were not formally recognized by the U.S. Department of State as a consular or diplomatic officer.

#### **I. Background**

You indicate that you are a citizen of both [Foreign Country] and the United States.<sup>1</sup> On [Date], you were named Minister of [Economic Department] for [Foreign Country].<sup>2</sup> That ministry works to promote economic growth through trade, tourism, and industrial expansion.<sup>3</sup> You work out of an office in [Foreign City].<sup>4</sup>

As part of your duties and responsibilities, you “will have to frequently engage U.S. officials, private companies, and others in the United States to represent and promote the commercial interests of the [Foreign Government].”<sup>5</sup>

#### **II. FARA Analysis**

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<sup>1</sup> E-mails from [Requestor] to FARA Unit (July 16, 2024).

<sup>2</sup> [News Story].

<sup>3</sup> [Economic Department web site].

<sup>4</sup> E-mails from [Requestor] to FARA Unit (July 16, 2024).

<sup>5</sup> *Id.*

The term “foreign principal” is defined by FARA to include, in relevant part, “a government of a foreign country.”<sup>6</sup> You have been appointed Minister of an agency of the [Foreign Country]. That government qualifies as a “foreign principal” for purposes of the Act.

Under FARA, “agent of a foreign principal” includes in pertinent part any person who acts “as an agent, representative, employee, or servant . . . of a foreign principal”<sup>7</sup> and within the United States:

- (i) engages . . . in political activities for or in the interests of such foreign principal;
- (ii) “acts . . . as a public relations counsel, publicity agent, [or] information-service employee . . . for or in the interests of such foreign principal; [or]
- (iv) . . . represents the interests of such foreign principal before any agency or official of the Government of the United States[.]”<sup>8</sup>

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.<sup>9</sup>

By accepting an appointment as a government minister, you agreed to act as a representative of the government of [Foreign Country]. You therefore have an agency relationship as defined by the Act.

Your July 16, 2024, e-mails establish that pursuant to your representation of [Foreign Country] you will undertake activities that would make you an “agent of a foreign principal” under FARA. Your responsibilities as Minister include representing the economic interests of [Foreign Country] in interactions with U.S. officials, which is registrable activity under 22 U.S.C. § 611(c)(1)(iv) when conducted within the United States. By attempting in this country to influence both those

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<sup>6</sup> 22 U.S.C. § 611(b)(1), (3).

<sup>7</sup> 22 U.S.C. § 611(c)(1).

<sup>8</sup> 22 U.S.C. § 611(c)(1)(i)-(ii), (iv). *See also* 22 U.S.C. § 611(c)(2) (defining “agent of a foreign principal” to further include “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”).

<sup>9</sup> 22 U.S.C. § 611(o).

officials and other U.S. persons regarding [Foreign Country]’s trade and tourism initiatives, you would also be seeking to influence U.S. government agencies and officials and a section of the public within the United States with reference to the political or public interests, policies, or relations of the government of [Foreign Country], and thereby would be conducting “political activities” under subsection (c)(1)(i).<sup>10</sup> Registration under FARA would thus be required unless you met the criteria for one of the statutory exemptions.<sup>11</sup>

Two exemptions are potentially relevant to employees of foreign governments who work in the United States and are officially recognized by the U.S. Department of State. One is for certain officials of foreign governments:

Any official of a foreign government, if such government is recognized by the United States, who is *not* a public-relations counsel, publicity agent, information-service employee, or a *citizen of the United States*, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official.<sup>12</sup>

Because you are a citizen of the United States, this exemption is not available to you, as you noted in your request.<sup>13</sup>

A second exemption for foreign officials is for “[d]iplomatic or consular officials” meeting certain criteria. Under that provision, registration is not required for:

A 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.<sup>14</sup>

Persons holding U.S. citizenship are thus eligible for this exemption, unlike the foreign-official exemption, assuming other criteria are met.

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<sup>10</sup> 22 U.S.C. § 611(c)(1)(i), (o).

<sup>11</sup> 22 U.S.C. § 611(c)(1)(i), (iv).

<sup>12</sup> 22 U.S.C. § 613(b) (emphasis added).

<sup>13</sup> E-mails from [Requestor] to FARA Unit (July 16, 2024). Given the plain inapplicability of the exemption on citizenship grounds, we need not determine whether the other provisions of this foreign official exemption—including the clause regarding publicity-related employees—are applicable.

<sup>14</sup> 22 U.S.C. § 613(a).

Unless and until you do, in fact, become duly accredited as a consular officer by the U.S. State Department, your proposed activities would lead to a requirement to register.<sup>15</sup> In the context of the diplomatic/consular exemption, “duly accredited” means “having received formal recognition as such, whether provisionally or by exequatur, from the Secretary of State.”<sup>16</sup> As of July 26, 2024, the U.S. State Department did not have a record of you having been recognized as a member of a foreign diplomatic mission.<sup>17</sup> If formal recognition for your efforts within the United States were obtained through appropriate diplomatic procedures, however, you would be eligible for the 22 U.S.C. § 613(a) exemption for those activities. The exemption would be contingent on you engaging only in the activities that the State Department recognized as being within the scope of your functions, which would need to include the economic-promotion functions you describe.<sup>18</sup>

Absent obtaining such formal recognition, you will need to register within ten days of engaging in any of the above-referenced registrable activities within the United States. If you have already engaged in such activities, please complete the registration process within 30 days of the date of this letter. Useful information and forms may be obtained on the FARA Unit’s website, located at <https://www.justice.gov/nsd-fara>.

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

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<sup>15</sup> 22 U.S.C. § 613(a).

<sup>16</sup> 28 C.F.R. § 5.301(a).

<sup>17</sup> E-mail from U.S. Department of State, Office of Foreign Missions Policy & Reciprocity to FARA Unit (July 26, 2024, 03:53 PM) (on file with FARA Unit).

<sup>18</sup> 22 U.S.C. § 613(a). The Vienna Convention on Consular Relations does recognize “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[.]” Vienna Convention on Consular Relations, art. 5(b)-(c), (1963), [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf).

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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](mailto: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