



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

September 30, 2024

Via E-mail

[Requestor's Name and Contact Information]

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

Dear [Requestor]:

We write in response to your July 24, 2024 letter, (“the July Letter”), which you supplemented by e-mail on August 28, 2024 (“the August E-mail”), requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) on whether you must register under the Foreign Agents Registration Act (“FARA”) of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain activities you may perform on behalf of [Foreign Firm]. Based on the representations in your letter and e-mail, and for the reasons discussed below, we have determined that you would be obligated to register for your proposed activities.

I. Factual Background

The July Letter states that [U.S. Firm] is a “public relations firm” based in [U.S. Location], and that you serve as one of [U.S. Firm's] managing partners and perform “project work” for [Foreign Firm].¹

According to the July Letter and August E-mail, [Foreign Firm] is a private marketing firm based in [Foreign Country].² [Foreign Firm's] website states that [Foreign Firm] [Redacted through, among other things, [Redacted] and [Redacted]].³ The August E-mail indicates that [Foreign Government] does not own or control [Foreign Firm] but is one of [Foreign Firm's] clients.⁴ Further, the July Letter and [Foreign Firm's] website indicate that [Foreign Firm's] clients include [Foreign Association].⁵

¹ July Letter at 1. The July Letter also explains that your work for [Foreign Firm] “focuses on activities like media training . . . strategy and content development for [public relations] campaigns in [Foreign Country], and limited engagement . . . with international trade media not located in the U.S.” *Id.*

² *Id.*; Aug. E-mail (response no. 1).

³ [Website Citation].

⁴ Aug. E-mail (response no. 1). In addition, the August E-mail suggests that [Foreign Firm's] work for [Foreign Government] occurs within [Foreign Country], not within the United States. *Id.*

⁵ July Letter at 1; *supra* note 3.

According to its website, [Foreign Association] is [Redacted] located in [Foreign Country].⁶ [Foreign Association's] website further explains that [Foreign Association's] mission is to [Redacted].⁷ The July Letter notes that [Foreign Association] is funded by its member companies, which consist "entirely of private sector [Redacted] companies."⁸

The [Redacted] industry in [Foreign Country] is regulated by [Foreign Government], which considers [Foreign Country] a [Redacted].⁹ You mention in the July Letter that [Foreign Association's] "advocacy is directed exclusively at [Foreign Government]" and that [Foreign Association] "does not conduct advocacy or political activities directed at the U.S. [G]overnment."¹⁰

The July Letter explains that [Foreign Firm] is organizing an upcoming "business development" conference for [Foreign Association] in [U.S. Location].¹¹ It further explains that "[t]he exclusive purpose of the [conference] is to promote [Foreign Country] for investment by [Redacted] companies."¹² You state that the audience at the conference "will be exclusively [Redacted] professionals based in or having traveled to [U.S. Location] with some connection to the [Redacted] industry" and "representatives of [Foreign Country] [Redacted] industry[.]"¹³ In addition, the July Letter indicates that the following representatives of [Foreign Government] will "engage in conversation with the participants and answer questions" at the conference: [Redacted].¹⁴

According to the July Letter, [Foreign Firm] "has asked [you] to arrange a limited number [(three or four)] of media interviews for [one or two] [Foreign Association] leaders with reporters based in [U.S. Location] that cover the [Redacted] industry."¹⁵ The July Letter states that "[t]he intention is for [the] interviews to exclusively focus on the attractiveness of [Foreign Country] as a domicile for [Redacted] investments" and that "[t]he objective [of the interviews] is to generate stories in . . . [media] publications about the [conference] and about [Foreign Association's] promotion of the

⁶ [Website Citation].

⁷ *Id.*

⁸ July Letter at 1-2.

⁹ [Website Citation].

¹⁰ July Letter at 1.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.* at 1.

¹⁴ *Id.* at 1; [Website Citation].

¹⁵ July Letter at 2.

[Foreign Country] as a [Redacted] destination.”¹⁶ The July Letter comments that [Foreign Government Official] may join the interviews.¹⁷ According to the August E-mail, you may be required in such cases to “[directly] coordinate logistics with a representative of [Foreign Government Agency]” and provide to the representative “details of which reporters would be conducting the interviews, what they may want to ask about, [and the] time [and] place of the interviews.”¹⁸ The August E-mail further indicates that you expect to provide to reporters only “information necessary to set up the interviews[,]” such as, what [Foreign Association] is, who [Foreign Government Official] is, what aspects of their industry and work they would like to discuss, and interview logistics.¹⁹ The August E-mail adds that [Foreign Association], through [Foreign Firm], or [Foreign Government Agency] would provide “more information about the specific issues discussed” if reporters are interested.²⁰

The August E-mail states that your proposed activities “would be directed by [Foreign Firm] and would not be directed or controlled by anyone associated with [Foreign Government].”²¹ Additionally, the July Letter explains that you would be paid by [Foreign Firm], which is receiving funding from [Foreign Association] to organize the conference.²²

According to the July Letter, “[n]o U.S. government officials will have any connection to the [conference] and the event will not include any kind of advocacy directed at the U.S. government nor is the [conference] intended to address the policies of the U.S. government.”²³

You have asked us for an advisory opinion on whether the “media work” that [Foreign Firm] has asked you to perform “would qualify for the commercial exemption to the registration requirement (§ 613(d))[,] even with the involvement of a foreign government official[,]” because (1) the purpose of the conference is “private sector business development,” (2) the conference “is being supported and organized by a private sector organization,” and (3) “the media activity is focused on business development and targeting reporters who cover business issues.”²⁴

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Aug. E-mail (response no. 2). The August E-mail additionally explains that “[i]n all likelihood” [Foreign Firm] would handle such logistical coordination with [Foreign Government Agency]. *Id.*

¹⁹ *Id.* (response no. 3).

²⁰ *Id.*

²¹ *Id.* (response no. 2).

²² July Letter at 2.

²³ *Id.*

²⁴ *Id.*

II. FARA Analysis

FARA’s purpose is to require public disclosure by persons engaging in certain activities for or on behalf foreign principals so that the U.S. government and the people of the United States may evaluate those activities considering such persons’ function as foreign agents.²⁵

FARA defines a “foreign principal” as, among other things, “a government of a foreign country”²⁶ 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.”²⁷ Because [Foreign Government Official] is part of [Foreign Government] and [Foreign Firm] and [Foreign Association] are entities whose principal place of business is in [Foreign Country], they are “foreign principals” within the meaning of FARA.

The term “agent of a foreign principal” under FARA, in relevant part, means:

- (1) [A]ny person who acts as an agent, representative, employee, or servant, or who acts in any other 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 –
 - (i) engages within the United States in political activities for or in the interests of such foreign principal; [or]
 - (ii) acts within the United States as a . . . publicity agent [or an] information-service employee . . . for or in the interests of such foreign principal[.]^[28]

FARA’s implementing regulations explain that the meaning of “control” as used in FARA includes “the possession or the exercise of the power, directly or indirectly, to determine the . . . activities of a person[.]”²⁹

In addition, FARA defines the term “political activities” to include

²⁵ See *Meese v. Keene*, 481 U.S. 465, 469 (1987) (discussing FARA’s legislative history); *About, Foreign Agents Registration Act*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/nsd-fara> (last visited Sept. 30, 2024).

²⁶ 22 U.S.C. § 611(b)(1).

²⁷ 22 U.S.C. § 611(b)(3).

²⁸ 22 U.S.C. § 611(c)(1)(i)-(ii).

²⁹ 28 C.F.R. § 5.100(b).

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[.]³⁰

FARA also defines the term “publicity agent” as

any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise[.]³¹

Finally, FARA defines the term “information-service employee” as

any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country[.]³²

FARA’s “agency” determination, therefore, is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal’s interests.

Here, you have an agency relationship with [Foreign Firm] under FARA. As you acknowledge, you propose to arrange media interviews for [Foreign Association] leaders with reporters at the request and under the direction and control of [Foreign Firm]. Moreover, if you perform similar services for [Foreign Government Official], you would also have an agency relationship with [Foreign Government] under FARA because you would be acting at its request and under its direction and control.³³

³⁰ 22 U.S.C. § 611(o).

³¹ 22 U.S.C. § 611(h).

³² 22 U.S.C. § 611(i).

³³ To the extent you would be required to directly coordinate with [Foreign Association] to arrange interviews for its leaders, you would also have an agency relationship with [Foreign Association] under FARA because you would be acting at its request and under its direction and control.

In addition, you propose to engage in registrable activities for these foreign principals. As described above, you plan to arrange interviews for [Foreign Association] leaders with [U.S. Location]-based media that [Foreign Government Official] may participate in to highlight “the attractiveness of [Foreign Country] . . . for [Redacted] investments” and to generate positive coverage of a conference whose “exclusive purpose” is to advance “[Foreign Association’s] promotion of [Foreign Country] as a [Redacted] destination.”³⁴ Further, you state you may also provide information to the media, including information on [Foreign Association] and [Foreign Government Official], which may be further disseminated.³⁵

The above-referenced activities are registrable under FARA for multiple reasons.

First, although you suggest that you would not engage in political activities concerning the U.S. Government or U.S. policies, you would nevertheless be performing “political activities” under FARA. As noted above, [Foreign Government] (1) regulates [Foreign Country’s] [Redacted] industry, (2) seeks to promote [Foreign Country] as a [Redacted], and (3) plans to send its [Redacted] regulator, [Foreign Government Official], and [Second Foreign Government Official] to the conference to “engage in conversation with [conference] participants and answer questions[.]”³⁶ Based on those facts, your proposed activities concern, among other things, the political or public interests of a foreign government. Moreover, arranging U.S. media interviews for [Foreign Association] leaders and [Foreign Government Official] that would be focused on promoting [Foreign Country] as a destination for [Redacted] investments would be activity “intend[ed] to . . . influence . . . [a] section of the public within the United States with reference to . . . the *political or public interests*, policies, or relations of a government of a foreign country.”³⁷

Second, by providing the above-referenced information regarding the interviewees to the media, you would be acting as a “publicity agent” because you would be disseminating “oral, visual, graphic, written, or pictorial information” for or in the interests of a foreign principal.³⁸

Third, you would be acting as an “information-service employee” because you would be furnishing “information . . . with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions” of a foreign country, foreign government, or entities whose principal place of business is in a foreign country.³⁹

³⁴ See *supra* notes 15-17 and accompanying text.

³⁵ See *supra* note 19 and accompanying text.

³⁶ See *supra* notes 9, 14 and accompanying text.

³⁷ 22 U.S.C. § 611(c)(1)(i), (o).

³⁸ 22 U.S.C. § 611(c)(1)(ii), (h).

³⁹ 22 U.S.C. § 611(c)(1)(ii), (i).

For these reasons, you qualify as an “agent of a foreign principal” under FARA and would be obligated to register for your proposed activities unless an exemption applies.

Section 613(d) of FARA exempts from registration, among other things, “[a]ny person engaging or agreeing to engage only (1) in *private* and *nonpolitical* activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest[.]”⁴⁰ In relevant part, FARA’s implementing regulations concerning Section 613(d) state:

[A]ctivities 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[.]*”⁴¹

FARA’s implementing regulations concerning Section 613(d)(2) further state, in relevant part:

[A] person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, *so long as the political activities are not directed by a foreign government . . . and the political activities do not directly promote the public or political interests of a foreign government[.]*”⁴²

Under FARA, “[t]he burden of establishing the availability of an exemption . . . shall rest upon the person whose benefit the exemption is claimed.”⁴³

In this matter, the exemption at Section 613(d)(1) would not apply. Although you contend that the conference is organized and supported by a private-sector business organization for the purpose of private-sector business development,⁴⁴ your proposed activities are not “private” under FARA. As explained above, your proposed activities to promote [Redacted] investment in [Foreign Country] concern the political or public interests of [Foreign Government] and would be conducted in conjunction with that government. The proposed media interviews that [Foreign Government

⁴⁰ 22 U.S.C. § 613(d)(1)-(2). FARA’s implementing regulations concerning Section 613(d) explain that the terms “trade” or “commerce” include “the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.” 28 C.F.R. § 5.304(a).

⁴¹ 28 C.F.R. § 5.304(b) (emphasis added).

⁴² 28 C.F.R. § 5.304(c) (emphasis added).

⁴³ 28 C.F.R. § 5.300.

⁴⁴ July Letter at 2.

Official] may participate in would focus on “the attractiveness of [Foreign Country] . . . for [Redacted] investments” and generate media coverage of a conference whose “exclusive purpose” is “to promote [Foreign Country]” for [Redacted] investments.⁴⁵ These activities would not be “private” because they “directly promote the public or political interests” of [Foreign Government]. Moreover, because you would be engaging in “political activities” under FARA, as discussed above,⁴⁶ your proposed activities are not “nonpolitical.”

The exemption at Section 613(d)(2) would also be inapplicable to your proposed activities to promote [Redacted] investment in [Foreign Country]—activities that plainly serve a foreign interest.⁴⁷ As described above, your proposed activities would directly promote the political and public interests of [Foreign Government]. In fact, you propose to conduct these activities in partnership with representatives of that foreign government who will attend the conference in [U.S. Location].⁴⁸ Because your proposed activities predominantly serve a foreign interest, the exemption under 613(d)(2) is likewise unavailable.

Because you qualify as an “agent of a foreign principal” and would not be otherwise exempt from registration,⁴⁹ you would be obligated to register for your proposed activities. Therefore, if you agree to engage in them, please complete your registration within 10 days of such agreement or before engaging in such activities, whichever comes first.

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.

⁴⁵ See *supra* notes 15-17 and accompanying text.

⁴⁶ See *supra* notes 36-37 and accompanying text.

⁴⁷ See 22 U.S.C. § 613(d)(2); *supra* notes 9, 12, 14, 16-17 and accompanying text.

⁴⁸ See 28 C.F.R. § 5.304(c) (rendering the exemption unavailable if the political activities are directed by a foreign government).

⁴⁹ Although you did not argue for its application, the registration exemption at Section 613(c) of FARA would be likewise unavailable here. That Section exempts from registration:

Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, publicity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee[.]

22 U.S.C. § 613(c) (emphasis added). However, even assuming [Foreign Government Official] is such an accredited official, this exemption would not apply to you because you would be acting as a publicity agent and an information-service employee, as explained above. See *supra* notes 38-39 and accompanying text.

[Requestor]
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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 or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit