



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 Entity]. 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 indicates that [U.S. Firm] is a "public relations firm" based in [U.S. Location].¹ It further indicates that you serve as one of [U.S. Firm's] managing partners and perform work for [Foreign Entity].²

According to its website, [Foreign Entity] is an association based in [Foreign Country] that "[r]epresent[s] [Foreign Country's] [Redacted][.]"³ The [Foreign Entity] website and July Letter explain that [Foreign Entity's] mission is [Redacted] through [Redacted] that include [Redacted] and [Redacted].⁴ They further explain that [Foreign Entity's] members consist of various private-sector businesses and associations and that [Foreign Entity] is led by a board of directors "comprised exclusively of leaders from [member] businesses."⁵ According to the July Letter and

¹ July Letter at 1.

² *Id.* The July Letter also explains that your work for [Foreign Entity] "focuses on analysis of international media coverage, limited engagement . . . with international media outlets, most of which are media that specifically cover[] sectors within [Redacted], and content creation for developments in [Foreign Country][.]" *Id.*

³ [Website Citation].

⁴ *Id.*; July Letter at 1.

⁵ [Website Citations]; July Letter at 1. The July Letter additionally notes that [U.S. Firm] "has been an associate member of [Foreign Entity]" for the past two years. *Id.*

August E-mail, [Foreign Entity] is funded by membership fees and grants from [Foreign Government's Agencies].⁶ The August E-mail adds that [Foreign Government] does not own or control [Foreign Entity].⁷

The July Letter indicates that in [Year], [Foreign Government] opened an international office in Washington, D.C. "to promote [Foreign Government's] [Redacted] sector and attract investment."⁸ According to [Foreign Government], [Redacted].⁹ The July Letter explains that representatives of [Foreign Government] who work in its international offices "manage relevant media relations in their respective jurisdictions" and that there is currently no [Foreign Government] representative in the D.C. office.¹⁰

According to the July Letter, [Foreign Entity] has asked you to "provide media relations support to [Foreign Government Official] for any visits he makes to the U.S. while the position of [Foreign Government Representative] in D.C. is unfilled."¹¹ The focus of your work "would be limited to media engagements . . . [that] promot[e] [Foreign Country] [Redacted] industry[.]"¹² Specifically, your work would involve "contacting U.S. journalists who cover [Redacted], arranging interviews for [Foreign Government Official] and/or responding to inquiries about [Foreign Government Official's] visits."¹³ The August E-mail explains that you would have to "liaise directly with representatives of [Foreign Government] on priorities and logistics[.]" such as what issues [Foreign Government Official] would want to discuss with reporters and where and when he would be available for interviews, and "brief him directly prior to any media engagements" about what issues the reporters have covered and would likely raise with him.¹⁴ In addition, the August E-mail indicates that you expect to provide to the media only "information necessary to set [up] interviews[.]" such as who [Foreign Government Official] is, what his responsibilities are, what issues he would discuss, and interview logistics, and that you would "connect" reporters with staff

⁶ July Letter at 1; Aug. E-mail (response no. 1).

⁷ Aug. E-mail (response no. 1).

⁸ July Letter at 1-2. You mention in the July Letter that "[you] believe that the [international] offices also play a more direct advocacy role[.]" *Id.* at 2.

⁹ [Website Citation].

¹⁰ July Letter at 2. The July Letter comments that "[Foreign Country's] representative in the D.C. office left [the] position" in early 2024. *Id.*

¹¹ *Id.*; [Website Citation].

¹² July Letter at 2.

¹³ July Letter at 2.

¹⁴ Aug. E-mail (response no. 2).

at [Foreign Government Agency] if they “are interested in more information about the specific issues that [Foreign Government Official] discusses[.]”¹⁵

The August E-mail represents that your work “would be directed and controlled by . . . [Foreign Entity].”¹⁶ Further, the July Letter explains that [Foreign Entity] told you that [Foreign Government] is unwilling to fund your work and that you would earn fees from [Foreign Entity] “exclusively from the membership fee funding stream.”¹⁷

The July Letter also states that your work “would not include engagements involving any advocacy directed at the U.S. Government or policies of the U.S.” and “would also not involve [you] speaking to reporters on behalf of [Foreign Government Official] on-the-record (meaning with the intention that [your] words be published or broadcast).”¹⁸

You have asked us for an advisory opinion on whether the “media work” that [Foreign Entity] has asked you to perform “would qualify for the commercial exemption to the registration requirement (§ 613(d))” because (1) “it is funded and directed by a private sector business organization,” (2) “it would be focused on business promotion and development rather [than] U.S. policy or politics, and” (3) “it would be limited to reporters who cover relevant business issues.”¹⁹

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.²⁰

FARA defines a “foreign principal” as, among other things, “a government of a foreign country”²¹ 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.”²² Because the [Foreign Government Official] is part of [Foreign Government] and [Foreign Entity]

¹⁵ *Id.* (response no. 3).

¹⁶ Aug. E-mail (response no. 2).

¹⁷ July Letter at 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ 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).

²¹ 22 U.S.C. § 611(b)(1).

²² 22 U.S.C. § 611(b)(3).

is an association 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[.]^[23]

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[.]”²⁴

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

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[.]²⁵

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[.]²⁶

²³ 22 U.S.C. § 611(c)(1)(i)-(ii).

²⁴ 28 C.F.R. § 5.100(b).

²⁵ 22 U.S.C. § 611(o).

²⁶ 22 U.S.C. § 611(h).

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[.]^[27]

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 Entity] and [Foreign Government] under FARA. As you acknowledge, you would provide “media relations support to [Foreign Government Official]” at the request and under the direction and control of [Foreign Entity].²⁸ Moreover, although you indicate that such activities would be funded by membership fees rather than [Foreign Government],²⁹ you would perform activities normally undertaken by [Foreign Government’s] D.C. office representative and in coordination with [Foreign Government] representatives and [Foreign Government Official]. Therefore, you would also be acting under the direction and control of [Foreign Government].

In addition, you would be engaging in registrable activities under FARA. As described above, you propose to interact with U.S. media to, among other things, (1) arrange interviews for [Foreign Government Official] focused on promoting [Foreign Country’s] [Redacted] industry, (2) respond to inquiries about [Foreign Government Official’s] U.S. visits, (3) provide information regarding [Foreign Government Official] to U.S. media, which may disseminate it further, and (4) refer the media to [Foreign Government Agency] staff for additional information.³⁰

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] considers [Redacted].³¹ Thus, based on that fact, your proposed activities concern, among other things, the political or public interests of a foreign

²⁷ 22 U.S.C. § 611(i).

²⁸ July Letter at 2; Aug. E-mail (response no. 2).

²⁹ July Letter at 1.

³⁰ See *supra* notes 11-13, 15 and accompanying text.

³¹ See *supra* note 9 and accompanying text.

government. Moreover, arranging U.S. media interviews for [Foreign Government Official] focused on promoting [Foreign Country's] [Redacted] industry 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."³²

Second, by providing the above-referenced information about [Foreign Government Official] 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.³³

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 association whose principal place of business is in a foreign country.³⁴

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[.]"³⁵ 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[.]*"³⁶

FARA's implementing regulations concerning Section 613(d) 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

³² 22 U.S.C. § 611(c)(1)(i), (o).

³³ 22 U.S.C. § 611(c)(1)(ii), (h).

³⁴ 22 U.S.C. § 611(c)(1)(ii), (i).

³⁵ 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).

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

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[.]*”³⁷

Under FARA, “[t]he burden of establishing the availability of an exemption . . . shall rest upon the person whose benefit the exemption is claimed.”³⁸

In this matter, the exemption at Section 613(d)(1) would not apply. While you contend that your proposed activities would be funded and directed by a private organization and have a business promotion purpose,³⁹ they are not “private” under FARA. As explained above, your proposed activities to promote [Foreign Country’s] [Redacted] industry, including arranging interviews for [Foreign Government Official] with U.S. media, would be conducted in conjunction with [Foreign Government].⁴⁰ These activities would not be “private” because they would “directly promote the public or political interests” of that foreign government. Moreover, because you would be engaging in “political activities” under FARA, as discussed above,⁴¹ your proposed activities are not “nonpolitical.”

The exemption at Section 613(d)(2) would also be inapplicable to your proposed activities to promote the [Redacted] industry in [Foreign Country]—activities that plainly serve a foreign interest.⁴² 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. Because your proposed activities predominantly serve a foreign interest, the exemption under 613(d)(2) is likewise unavailable.

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

³⁸ 28 C.F.R. § 5.300.

³⁹ July Letter at 2.

⁴⁰ See *supra* notes 11-15 and accompanying text.

⁴¹ See *supra* notes 31-32 and accompanying text.

⁴² See 22 U.S.C. § 613(d)(2); *supra* notes 9, 11-15 and accompanying text.

Because you qualify as an “agent of a foreign principal” and would not be otherwise exempt from registration,⁴³ 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.

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

⁴³ Although you did not argue for its application, the exemption at Section 613(c) would likewise be unavailable. 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 33-34 and accompanying text.