



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 26, 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 the May 2024 letter (the "May Letter") from your clients, [U.S. Firm] and [Individual], requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a), which you supplemented by letter from [U.S. Firm] on July 26, 2024 (the "July Letter"), on whether [U.S. Firm] must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain activities it is performing on behalf of [Foreign Institution]. Based on the representations in the letters and their supporting documentation, and for the reasons discussed below, we have determined that [U.S. Firm] must register for its activities.

I. Factual Background

According to the May Letter, [U.S. Firm] is a "private venture capital fund management firm" formed in Delaware and registered in [Redacted].¹ It was created to "manage the investments" of [U.S. Fund].² [U.S. Firm] has three employees, including [Individual], who is a U.S. citizen and the firm's managing director, sole member, and sole general partner.³

The May Letter explains that [U.S. Fund] is a Delaware-registered and [Redacted]-based partnership between the Delaware entity, [U.S. Entity], whose managing director is [Individual], and a trust based in [Foreign Country] called [Foreign Trust].⁴ [Foreign Trust] serves as a "special purpose vehicle" for [U.S. Fund's] investments in the United States and abroad.⁵ According to the July Letter, it is directed and administered by the [Foreign Country]-based trustee, [Foreign Trustee].⁶ The May Letter indicates that [Individual] personally contributed [Redacted] in capital

¹ May Letter at 1, Ex. 7 at 2, Ex. 8 at 2, Ex. 9 at 1.

² *Id.*

³ May Letter at 2-3. [Individual] is also a citizen of France and the only [U.S. Firm] employee who has an ownership interest in the firm. *Id.* at 3, 9.

⁴ May Letter at 3, Ex. 6 at 1-2, 63.

⁵ May Letter at 3.

⁶ July Letter at 2; [Website Citation].

to [U.S. Fund] for investment but that the primary source of funds for [U.S. Fund] investments is [Foreign Institution].⁷ [Foreign Trustee] owns [Foreign Trust's] assets for the sole benefit of [Foreign Institution] and [Foreign Institution's] Board of Directors has the sole right to terminate [Foreign Trust], according to the July Letter.⁸

[Foreign Institution] is a "[Redacted]" located in [Foreign Country].⁹ It was founded by [Redacted], who endowed [Foreign Institution] with [Redacted] at its founding in [Year].¹⁰ [Foreign Institution] has several administrative offices, and its Board of Directors oversees its activities.¹¹ [Foreign Institution's] Board of Directors is chaired by [Foreign Government Official] and includes several [Foreign Government Officials] and advisors to [Foreign Government].¹²

According to its website, [Foreign Institution] "[Redacted]" through a strategy that, among other things, seeks to "[Redacted]" in alignment with the research, development, and innovation priorities of [Foreign Government] program to economically, socially, and culturally diversify [Foreign Country] called [Redacted].¹³ [Foreign Institution's] website indicates that as part of an initiative within [Foreign Institution's] strategy called [Redacted], [Foreign Institution] committed [Redacted] from its endowment through [Foreign Trust] to [U.S. Fund] for investment in "[Redacted]."¹⁴ The aim of [Redacted], according to [Foreign Institution's] website, is to "[Redacted]" and "[Redacted]."¹⁵

The May Letter indicates that [Foreign Institution] has entered into a "contractual relationship" with [U.S. Firm] whereby [U.S. Firm] is managing the investment of [Foreign Institution's] [Redacted] capital commitment to [U.S. Fund].¹⁶ Attached to the May Letter were copies of the Amended and Restated Relationship Term Sheet ("Relationship Term Sheet")¹⁷ signed by

⁷ May Letter at 2-3. According to the May Letter, [U.S. Fund] has no other investors besides [Foreign Institution] and [Individual] and does not intend to take on any additional investors. *Id.* at 3.

⁸ July Letter at 2.

⁹ May Letter at 4; [Website Citation].

¹⁰ May Letter at 4; [Website Citation].

¹¹ May Letter at 4; [Website Citations].

¹² May Letter at 4; [Website Citation].

¹³ [Website Citations].

¹⁴ [Website Citation]; *see also* May Letter at 3.

¹⁵ [Website Citation].

¹⁶ May Letter at 1, 3-4, 8.

¹⁷ May Letter, Ex. 5.

[Foreign Institution] and [Individual], the Summary of Principal Fund Terms (“Fund Terms”)¹⁸ and [Redacted] Investment Guidelines (“Investment Guidelines”),¹⁹ which were attached as schedules to the Relationship Term Sheet, and [U.S. Fund] Amended and Restated Limited Partnership Agreement (“[U.S. Fund] Agreement”)²⁰ signed by [Individual] and [Foreign Trust].

Under the parties’ agreement, [Foreign Institution] has sole discretion to terminate its management agreement with [U.S. Firm] and remove [U.S. Firm] as fund manager.²¹ It also has sole discretion to appoint one representative to [U.S. Firm’s] board of directors, which may be a [Foreign Institution] employee.²² In addition, [Foreign Institution] has appointed a Limited Partner Advisory Committee (“LPAC”) comprised of its [Redacted] that [U.S. Firm] periodically confers with to, among other things, determine the scope of [U.S. Fund’s] investments and receive feedback on [U.S. Fund’s] budget and operational matters.²³ The LPAC reports to [Foreign Institution’s] Board of Trustees on [U.S. Firm’s] investment activities.²⁴

The parties’ agreement further provides that [U.S. Firm] has discretion to make investments from [U.S. Fund] without [Foreign Institution’s] consent, as long as the investments are consistent with the Investment Guidelines.²⁵ [U.S. Firm] reports to [Foreign Institution’s] [Redacted] about its operations and investments.²⁶ In return for managing [U.S. Fund’s] investments, [U.S. Firm] has received one-time start-up costs and management fees from [U.S. Fund], which it has used to pay its “normal operating expenses.”²⁷ It may also receive a “discretionary bonus” from [U.S. Fund].²⁸

¹⁸ May Letter, Ex. 5A.

¹⁹ May Letter, Ex. 5B.

²⁰ May Letter, Ex. 6.

²¹ May Letter, Ex. 5 at 6.

²² May Letter at 3, Ex. 5 at 5, Ex. 5A at 8. The July Letter indicates that [Foreign Institution] has not appointed a board member to [U.S. Firm] or expressed an interest to do so, and that if [Foreign Institution] did appoint a [U.S. Firm] board member, [Individual] would appoint a third board member to [U.S. Firm] to retain control of the firm. July Letter at 3.

²³ May Letter, Ex. 5 at 5-6, Ex. 5A at 7-8; July Letter at 3-4.

²⁴ July Letter at 3; May Letter, Ex. 5 at 6, Ex. 5A at 8.

²⁵ May Letter at 1, 3-4, 8-9, 11, Ex. 5 at 5; July Letter at 3-5.

²⁶ May Letter at 4, Ex. 5 at 6.

²⁷ May Letter at 5-6, Ex. 5 at 3-5; Ex. 5A at 10, Ex. 6 at 13-17. According to the May Letter, expenses include salaries, wages, travel, overhead, research, and governmental and compliance. May Letter at 6. The May Letter further indicates that [U.S. Firm] receives reimbursement from [U.S. Fund] for some of its expenses. *Id.*

²⁸ May Letter at 5, Ex. 5 at 4; Ex. 5A at 10, Ex. 6 at 15.

[U.S. Firm] indicates in the May Letter that the “ultimate goal” of its investments is “to return the full capital commitment to [Foreign Institution] and [Individual] with a healthy profit.”²⁹

According to the Investment Guidelines, [U.S. Firm’s] investments must further the following “primary” objectives of [Redacted]:

[S]timulate, attract and grow [Redacted] companies that will contribute towards the advancement of [Foreign Country’s] innovation and entrepreneurship ecosystem[; and]

[A]ccelerate the delivery of [Foreign Institution’s] [Redacted] research by investing in the rapid growth of [Redacted] companies, existing [Redacted] opportunities and companies that are [Redacted] to [Foreign Institution’s] R&D [research & development] ecosystem, and partnering with major companies and organizations to deliver commercial outcomes and returns.³⁰

[U.S. Firm’s] investments must also advance additional objectives in the Investment Guidelines that include:

[To][r]ealize [Foreign Institution’s] economic development mission[;]

[a]ddress an unmet need for capital in the capital markets of [Foreign Country;][and]

[c]reate new jobs and bring economic prosperity to [Foreign Country].”³¹

The Investment Guidelines indicate that [U.S. Firm’s] investments must align with [Redacted] proposed vision to “[d]eliver[] economic impact and financial returns by becoming the leading [Redacted], investor in [Redacted] while bringing [Foreign Institution] research to the market” and [Redacted] proposed mission to “create sustainable companies and returns while delivering upon the objectives of [Redacted] and beyond, including diverse impacts for all stakeholders while investing in [Redacted] companies.”³²

Under the Investment Guidelines, [U.S. Firm] may invest in, among other things, [Redacted] entities that are “[Redacted]” that “shall establish a wholly or partially owned subsidiary within [Foreign Country][.]”³³ The Investment Guidelines define the term “[Redacted]” as:

²⁹ May Letter at 1, 3.

³⁰ May Letter, Ex. 5B at 1; *see also* May Letter at 1, 11, Ex. 5 at 2, Ex. 5A at App. A, Ex. 6 at Ex. D.

³¹ May Letter, Ex. 5B at 1; *see also* May Letter at 3-4, Ex. 6 at Ex. D; [Website Citation].

³² May Letter, Ex. 5B at 1; *see also* [Website Citation].

³³ May Letter, Ex. 5B at 2-3

Companies whose primary product or service offering is dependent upon [Redacted].³⁴

The Investment Guidelines note that examples of “[Redacted]” can be found in fields, such as “[Redacted].”³⁵

According to the May and July Letters, [U.S. Firm] identifies companies for potential investment in “a variety of ways,” including through consultation with [Foreign Institution] and “networking in the venture capital, academic and scientific communities.”³⁶ The May Letter states that [U.S. Firm] discloses to companies that receive its investments that [Foreign Institution] is the source of the investment funds and that the investments “are intended to contribute towards the advancement of [Foreign Country’s] innovation and entrepreneurship ecosystem (consistent with [U.S. Firm’s Investment Guidelines]).”³⁷ The May Letter further states that [U.S. Firm] makes that disclosure so that the companies are “aware of the source of [U.S. Fund’s] funds and its investment guidelines.”³⁸

Since August 2023, [U.S. Firm] has made investments from [U.S. Fund] in several identified entities that operate in the United States.³⁹ The May and July Letters indicate that [U.S. Firm] “helps manage” the companies it invests in and “sometimes receives a board and/or observer seat” in those companies.”⁴⁰

According to [U.S. Firm], it does not make political donations to any U.S. politicians, political parties, or political action committees or meet with any members of Congress or state or local legislatures or engage in lobbying activity.⁴¹ [U.S. Firm] also claims that it does not disseminate

³⁴ *Id.* at 1-2.

³⁵ *Id.* at 2; *see also* May Letter 1, 3, Ex. 6 at 1.

³⁶ May Letter at 3; July Letter at 5. The July Letter explains that [U.S. Firm] employs a former [Foreign Institution] employee as a consultant who “is responsible for sourcing and evaluating potential investments.” July Letter at 5. Further, the July Letter remarks that on at least two occasions, [Foreign Institution] suggested possible investments to [U.S. Firm], which [U.S. Firm] ultimately declined to make. *Id.*

³⁷ May Letter at 6.

³⁸ *Id.*

³⁹ May Letter 5; July Letter at 5.

⁴⁰ May Letter at 4; July Letter at 6. The July Letter comments that [Foreign Institution] does not have a role in [U.S. Firm’s] efforts to help manage the companies it invests and that any board or observer seats that [U.S. Firm] receives from the companies it invests in are “held by [U.S. Firm’s] sole member and/or [U.S. Firm] employees alone.” July Letter at 6.

⁴¹ May Letter at 6-10.

any informational materials.⁴² It further claims that it does not engage in its own publicity or public relations, does not have and does not intend to create a public website, and does not issue and does not intend to issue any press releases concerning its investments.⁴³

[U.S. Firm] has requested an advisory opinion on whether it has an obligation to register under FARA.⁴⁴ [U.S. Firm] acknowledges that [Foreign Institution] may be a “foreign principal” within the meaning of Section 611(b)(3) of FARA because it is an “organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”

However, [U.S. Firm] contends that it is not an “agent of a foreign principal” under FARA.⁴⁵ Specifically, it argues that no agency relationship exists under Section 611(c) of FARA because [U.S. Firm] “has authority to make its own investment decisions” and does not take “orders” from or operate “under the direction or control” of [Foreign Institution].⁴⁶ Thus, [U.S. Firm] asserts, while its investment activities relating to [Foreign Institution’s] funds may qualify as soliciting, collecting, disbursing, or dispensing contributions, loans, money or other things of value for or in the interest of a foreign principal under Section 611(c)(1)(iii) of FARA, [U.S. Firm] has no obligation to register for these activities in the absence of an agency relationship.⁴⁷ [U.S. Firm] also argues that its activities do not constitute “political activities” under Section 611(c)(1)(i) of FARA or acting as a “public relations counsel,” “publicity agent,” “information-service employee,” or “political consultant” on behalf of a foreign principal under Section 611(c)(1)(ii).⁴⁸

Alternatively, [U.S. Firm] claims that it would be exempt from registration under Sections 613(d)(1) and 613(d)(2) of FARA.⁴⁹ It contends that it is a private firm operating for profit that is investing [Foreign Institution’s] and [Individual’s] funds to “generate sustainable returns on invested capital” and that [U.S. Firm] does not promote, and has no interest in promoting, “the interests of [Foreign Country] to any member of the public or to any U.S. government official.”⁵⁰

⁴² *Id.*

⁴³ July Letter at 7. The May and July Letters explain that [U.S. Firm] has provided “short quotes” to entities that received [U.S. Fund] investments and chose to issue their own press releases about the investments. May Letter at 7; July Letter at 7, Exs. A-B. According to [U.S. Firm], it has sought to review and approve such press materials if they “mention [U.S. Firm] by name,” but it has not prepared or disseminated those materials. May Letter at 7; July Letter at 7.

⁴⁴ May Letter at 1.

⁴⁵ *Id.* at 8-10.

⁴⁶ *Id.* at 8-9.

⁴⁷ *Id.* at 10.

⁴⁸ *Id.* at 9-10.

⁴⁹ *Id.* at 10-12.

⁵⁰ May Letter at 11.

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.⁵¹

FARA defines a "foreign principal" as, among other things, "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."⁵² Because [Foreign Institution] was founded in [Foreign Country] and has its principal place of business there, it is a "foreign principal" within the meaning of FARA, as [U.S. Firm] acknowledges.⁵³

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

- (1) [A]ny person⁵⁴ who acts . . . 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 –
 - (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal[.]⁵⁵

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 policies or the activities of a person, whether . . . *by contract*, or otherwise."⁵⁶

Thus, FARA's "agency" determination 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.

⁵¹ 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 Apr. 22, 2024).

⁵² 22 U.S.C. § 611(b)(3).

⁵³ May Letter at 8.

⁵⁴ FARA defines a "person" to include partnerships, associations, corporations, organizations, or other combinations of individuals. See 22 U.S.C. § 611(a).

⁵⁵ 22 U.S.C. § 611(c)(1)(iii) (emphasis added).

⁵⁶ 28 C.F.R. § 5.100(b) (emphasis added).

In this case, although [U.S. Firm] contends that it is independent of [Foreign Institution] and has discretion to make investments without [Foreign Institution's] consent, it nevertheless has an agency relationship with [Foreign Institution] under FARA. [U.S. Firm] is engaging in activities pursuant to its contractual agreements with [Foreign Institution].⁵⁷ As explained above, [Foreign Institution] has declared that its [Redacted] capital commitment to [Redacted] is for investment in, among other things, "[Redacted]," and the Investment Guidelines require that [U.S. Firm's] investments from [U.S. Fund] serve objectives that include accelerating "the delivery of [Foreign Institution's] [Redacted] research" and realizing "[Foreign Institution's] economic development mission."⁵⁸ These activities are registrable; by investing [Foreign Institution's] funds within the United States, [U.S. Firm] is collecting, disbursing, and dispensing "money . . . for or in the interests of [a] foreign principal" under FARA.⁵⁹

Therefore, for the foregoing reasons, [U.S. Firm] is acting as an "agent of a foreign principal" under FARA and must register 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[.]"⁶⁰ According to FARA's implementing regulations, "[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*["⁶¹ Under FARA, "[t]he burden of establishing the availability of an exemption . . . shall rest upon the person whose benefit the exemption is claimed."⁶²

Here, [U.S. Firm] has not met its burden of establishing that Section 613(d)(1) applies to its activities on behalf of [Foreign Institution]. While [U.S. Firm] suggests that it is engaging in private, for-profit activities,⁶³ its activities are not "private" under FARA. As discussed above, [Foreign Institution] seeks to align its strategy with the research, development, and innovation priorities of [Foreign Government] program and has proclaimed that [Redacted] aim is to

⁵⁷ See 22 U.S.C. § 611(c)(1); 28 C.F.R. § 5.100(b) (defining "control" and its variants to include "the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person . . . *by contract*") (emphasis added); *supra* notes 16-20 and accompanying text.

⁵⁸ See *supra* notes 14, 30-32 and accompanying text.

⁵⁹ See 22 U.S.C. § 611(c)(1)(iii).

⁶⁰ 22 U.S.C. § 613(d)(1)-(2).

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

⁶² 28 C.F.R. § 5.300.

⁶³ May Letter 1, 3, 11.

“[Redacted]” and “[Redacted].”⁶⁴ Moreover, [U.S. Firm’s] contract announces that [Redacted] mission includes “delivering upon the objectives of [Foreign Government Program]” and requires [U.S. Firm] to make investments that directly promote [Foreign Country’s] public interests – namely, its goals of advancing “innovation and entrepreneurship ecosystem,” addressing its unmet need for capital in its capital markets, creating new jobs, and achieving “economic prosperity.”⁶⁵ Accordingly, [U.S. Firm] cannot claim the exemption at Section 613(d)(1).

[U.S. Firm] has also not met its burden of establishing that the exemption in Section 613(d)(2) applies. Even though [U.S. Firm] has discretion to make investments from [U.S. Fund] without [Foreign Institution’s] consent and [Individual] stands to profit from [U.S. Firm’s] investments, the following facts establish that [U.S. Firm’s] activities *predominantly* serve foreign interests: (1) [Foreign Institution’s] capital contribution to the fund is far greater than [Individual’s] capital contribution; (2) [U.S. Firm’s] investments from [U.S. Fund] promote the interests of [Foreign Institution] and [Foreign Country]; (3) [Foreign Institution] exercises extensive control over [U.S. Firm’s] operations, including sole discretion to terminate [Foreign Trust], sole discretion to terminate its investment agreement with [U.S. Firm] and remove [U.S. Firm] as fund manager, sole discretion to appoint a representative to [U.S. Firm’s] board of directors, and the ability to appoint an LPAC which, in turn, has authority to help [U.S. Firm] determine the scope of [U.S. Fund’s] investments and provides feedback to [U.S. Firm] on [U.S. Fund’s] budget and operations.⁶⁶ For these reasons, [U.S. Firm] cannot claim the exemption at Section 613(d)(2).

Please complete [U.S. Firm’s] registration within 10 days of the date of this letter. 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

⁶⁴ See *supra* notes 13, 15 and accompanying text.

⁶⁵ See *supra* notes 30-32 and accompanying text.

⁶⁶ See *supra* notes 7, 14-15, 21-26, 30-32 and accompanying text.