



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 30, 2024

**Via E-mail**

[Requestor]

[Address]

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

Dear [Requestor]:

We write in response to your July 1, 2024, e-mail (“July 1 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 of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA”), for certain proposed activities you may undertake on behalf of a public-private joint venture financing and constructing a dam in [Foreign Country]. Based on the representations in your e-mail, and for the reasons discussed below, we have determined that you are obligated to register for the proposed activities.

**I. Background**

Since [Year], [Foreign Country]’s [Environment Department] has contracted with the [Foreign Country] corporation [Company A] to study the feasibility of a potential dam known as [Dam Name] and a related pipeline project to address water shortages in [Foreign City].<sup>1</sup> As of June 20, 2024, a planned next step was for the [Foreign Country Government Investment Agency], the Government of [Foreign Country]’s investment promotion agency, to present the project and request approval of a joint-venture agreement to the Cabinet of [Foreign Country], the government’s executive body, pursuant to a national law covering public-private partnerships.<sup>2</sup> [Company B], another [Foreign Country] corporation, is [Company A]’s subcontractor to oversee the closing of the project financing and manage construction of the project.<sup>3</sup>

The joint venture will be between [Company A], [Company B], the [Foreign Country Water Authority], and an equity investor as shareholders.<sup>4</sup> The joint-venture company [will own and operate the dam for a period of 30 years, after which ownership will pass entirely to the public

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<sup>1</sup> July 1 E-mail Attach. 1 at 2, 4.

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 3.

entities].<sup>5</sup> [Foreign Country Water Authority] is a state-owned enterprise overseen by the [Foreign Country Land Department].<sup>6</sup> The joint venture will be subject to an agreement with the city government requiring payment for the water delivered.<sup>7</sup>

Following up on an earlier approach in 2021 (when project preparation had not been complete), on June 17, 2024, you were again “approached” by consultants working with [Company A] to explore the possibility of obtaining funding from the U.S. International Development Finance Corporation (“DFC”), an agency of the U.S. federal government.<sup>8</sup> Your introductory email correspondence with current personnel on the project occurred on June 19, 2024.<sup>9</sup> On the same date, you emailed a person on staff at the DFC about (a) whether projects within [Foreign Country] are eligible for DFC funding while certain actors within the country are subject to sanctions under the Global Magnitsky Program, and (b) about contact information for presentation of materials and engagement in discussions.<sup>10</sup> The DFC staff person indicated that the agency is currently limiting investments in [Foreign Country] but reviewing projects on a case-by-case basis.<sup>11</sup>

At your instigation, the personnel involved with the [Dam Name] project are preparing materials necessary for consideration by the DFC.<sup>12</sup> You plan to then submit the information package to the DFC and advise the joint venture through any process of engagement with the DFC that does occur.<sup>13</sup> You state that you may be compensated for your efforts in the future but the terms for any such payments have not yet been agreed upon.<sup>14</sup>

You seek to learn whether you are required to register under FARA, including “specifically whether [you] will need to do so even at this interim stage of establishing whether the DFC will find this project eligible or not.”<sup>15</sup>

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

<sup>6</sup> [Internet Citation.]

<sup>7</sup> July 1 E-mail at 2.

<sup>8</sup> July 1 E-mail Attach. 2 at 4; *id.* at 2 (describing how a project participant had “made initial contact with [you] to see if there is any possibility of [you] assisting [them] in sourcing funding for the” dam).

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 4; July 1 E-mail at 1; U.S. Dept. of the Treasury, [Press Release Regarding Global Magnitsky Sanctions].

<sup>11</sup> July 1 E-mail Attach. 2 at 4.

<sup>12</sup> July 1 E-mail at 1; July 1 E-mail Attach. 2.

<sup>13</sup> July 1 E-mail Attach. 2 at 3-4.

<sup>14</sup> July 1 E-mail at 2; July 1 E-mail Attach. 2 at 1.

<sup>15</sup> July 1 E-mail at 2.

## II. FARA Analysis

Whether a person is an “agent of a foreign principal” under FARA depends on three factors: (1) the existence of a foreign principal; (2) the nature of the relationship between the person and the foreign principal; and (3) whether the person is engaging in specified activities within the United States for or in the interests of such foreign principal. When all three parts of the inquiry are established, an obligation to register under FARA will arise.

FARA’s definition of a “foreign principal” includes 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.”<sup>16</sup> The joint venture is organized under the laws of [Foreign Country] and has its principal place of business there, so it qualifies as a foreign principal under FARA.

As to the nature of the relationship, agency can arise under FARA when a person acts “as an agent” or “at the order, request, or under the direction or control, of a foreign principal” in covered activities.<sup>17</sup> Agency can also arise when a person “agrees, consents, assumes or purports to act as, or . . . holds himself out to be, whether or not pursuant to contractual relationships, an agent of a foreign principal.”<sup>18</sup> Here, your activities have been and are pursuant to a request from the [Dam Name] joint venture.<sup>19</sup> You have also held yourself out to the DFC as acting on behalf of the project participants and in fact been acting as such an agent.<sup>20</sup> For all these reasons, you do have the requisite relationship with a foreign principal.

Turning to which activities require registration, those include, among others, when any person within the United States and in the interest of a foreign principal “engages . . . in political activities,” “solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value,” or “represents [such] interests . . . before any agency or official of the Government of the United States.”<sup>21</sup> “[P]olitical activities” includes “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 . . . with reference to the political or public interests, policies, or relations of a foreign government.”<sup>22</sup> The activities for the joint venture which you are undertaking

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<sup>16</sup> 22 U.S.C. § 611(b)(3).

<sup>17</sup> 22 U.S.C. § 611(c)(1).

<sup>18</sup> 22 U.S.C. § 611(c)(2).

<sup>19</sup> July 1 E-mail Attach. 2 at 4.

<sup>20</sup> July 1 E-mail Attach. 2 at 3-4 (explaining that you had been “approached . . . to explore again the possibility of funding from DFC,” that you would “be in contact to begin the process of presenting *our* materials,” and that the group was “preparing an information package at [your] request”) (emphasis added); *see supra* note 8.

<sup>21</sup> 22 U.S.C. § 611(c)(1)(i), (iii)-(iv).

<sup>22</sup> 22 U.S.C. § 611(o).

in the United States include engagement in political activities, solicitation of financing, and representation before the DFC. FARA covers those activities. Because the activities were pursuant to a request from the [Foreign Country] entity, on whose behalf you were acting as an agent, all three parts of the requirements for registration under FARA are present.

Although there are certain exemptions from FARA's requirements, you do not qualify for any of them even though the joint venture's work is private to a significant degree. Under Section 613(d)(1), an agent of a foreign principal may be exempt from FARA's registration requirements if it engages "*only . . . in private and nonpolitical activities in furtherance of the bona fide trade or commerce*" of the foreign principal.<sup>23</sup> FARA's implementing regulations further provide that:

[the] activities 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.<sup>24</sup>

To qualify for this "commercial" exemption, the activities at issue thus must be nonpolitical, private, and not directly in promotion of the public interests of the foreign government.

Your representation of the [Dam Name] joint venture in its effort to obtain financing from a U.S. agency, however, is not solely private. [Foreign Country Water Authority], a state-owned enterprise governed by a [Foreign Country] government agency, is one of the partners of the joint venture.<sup>25</sup> The joint venture is being promoted by another [Foreign Country] government agency, [Foreign Country Government Investment Agency], and is subject to approval by the Cabinet of [Foreign Country].<sup>26</sup> Indeed, the venture agreement is pursuant to a [Foreign Country] program for "*public private partnerships.*"<sup>27</sup> Under the [Dam Name] proposal, the city government will purchase the water and the dam will be operated privately only for a finite period before it reverts to the governmental entities.<sup>28</sup> Though in part privately operated and investor-owned, the project nevertheless is a utility providing an essential public service. Taken together, these facts demonstrate that your work does not involve "only" private activities, even though the joint

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<sup>23</sup> 22 U.S.C. § 613(d) (emphasis added).

<sup>24</sup> 28 C.F.R. § 5.304(b).

<sup>25</sup> See *supra* notes 4, 6 and accompanying text.

<sup>26</sup> See *supra* note 2 and accompanying text.

<sup>27</sup> See *id.* (emphasis added).

<sup>28</sup> See *supra* notes 5, 7 and accompanying text.

venture may in part be engaging in commerce through the sale of water.<sup>29</sup> Under the governing regulation, if your representation was “in furtherance of the bona fide trade or commerce” of the joint venture, [Foreign Country Water Authority]’s ownership stake would not by itself mean that the commercial exemption is unavailable.<sup>30</sup> But under the circumstances here, even assuming a water utility is engaged in commerce, your activities directly promote the public interests of [Foreign Country]’s government in addressing the water needs of [Foreign City] and thus would not be considered “private.”<sup>31</sup> Your representation of those interests before a U.S. government agency also qualifies these activities as “political activities” as defined by FARA,<sup>32</sup> which renders the representation ineligible for the commercial exemption under the “nonpolitical” requirement.<sup>33</sup> Since it is neither solely private nor nonpolitical, your representation of [Dam Name] is not eligible for the exemption.

Given that no exemption is applicable, your registration obligation for your current round of efforts for the joint venture commenced no later than June 19, 2024, the time by which you had consented to the request from representatives of the joint venture to explore DFC funding and begun interacting with agency personnel in furtherance of that request. Your registration was therefore due within 10 days of becoming an agent of the joint venture, *i.e.*, no later than June 29, 2024.<sup>34</sup> It does not matter that the request from the foreign principal had not yet proceeded to a “formal mandate,”<sup>35</sup> that the DFC has not yet determined whether the project is generally eligible for funding, or that whether you will be financially compensated has not yet been determined.<sup>36</sup> It was enough that a foreign principal had requested that you engage in covered activities pursuant to an agency relationship, and you had already begun to do so on its behalf.

Please complete your registration within 10 days of the date of this advisory opinion. 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. 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.

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<sup>29</sup> 22 U.S.C. § 613(d).

<sup>30</sup> 28 C.F.R. § 5.304(b).

<sup>31</sup> *Id.*

<sup>32</sup> 22 U.S.C. § 611(o).

<sup>33</sup> 22 U.S.C. § 613(d).

<sup>34</sup> 22 U.S.C. § 612(a).

<sup>35</sup> July 1 E-mail Attach. 2 at 4.

<sup>36</sup> July 1 E-mail at 2.

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Sincerely,

*/s/ Evan N. Turgeon*

Evan N. Turgeon  
Chief, FARA Unit