



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 28, 2024

Via E-mail

[Requestor]

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

Dear [Requestor]:

We write in response to your April 26, 2024, letter (“April 26 Letter”),¹ requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), regarding registration obligations applicable to certain [law firm] attorneys and non-attorneys pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or “the Act”), in connection with potential activities for [foreign country Embassy]. [Law firm] will be conducting an audit regarding [foreign country] export controls, the details of which follow. In response to your inquiry, we do not oppose the proposal you have made concerning the registration obligations of certain [law firm] employees.

I. Background

The April 26 Letter states that [law firm] has been registered as an agent of the Embassy since [Year] and that various [law firm] attorneys and policy experts have been registered under FARA as part of that representation.² The letter also states that [law firm] attorneys regularly provide non-registrable legal representation and advice to the Embassy separate and apart from activities requiring registration. According to the April 26 Letter, the Embassy recently asked [law firm] to undertake an audit of and provide legal guidance regarding the [foreign country]’s export controls (the “Export Controls Audit”). The April 26 Letter represents that individuals working on the Export Controls Audit will work independently from those individuals at the firm who are registered under FARA for their activities on behalf of the Embassy.

A. Legal Audit Team

The April 26 Letter states that the [law firm] attorneys who will be participating in the Export Controls Audit are not currently registered as foreign agents of the Embassy. This group of attorneys (the “Legal Audit Team”) would provide the Embassy with the following legal services in connection with the Export Controls Audit:

¹ Letter from [Requestor] to Matthew G. Olsen, Assistant Attorney General for National Security, and Evan N. Turgeon, Chief, FARA Unit (Apr. 26, 2024) (on file with FARA Unit).

² [FARA form links redacted]

- (i) a technical assessment of the existing laws, regulations, executive orders, decrees, proclamations, licenses, licensing conditions, treaties and agreements, and other policies affecting the exportation of controlled technologies in the United States, Europe, and other foreign countries;
- (ii) a review and analysis of existing export controls regimes, including but not limited to [text redacted];
- (iii) an analysis and audit of the [foreign country]'s existing export controls;
- (iv) identification of any gaps between the existing [foreign country] export controls framework and those of other countries or international export controls regimes; and
- (v) recommendations regarding how the [foreign country] might amend its existing laws or policies to eliminate any gaps identified between its export controls and international norms.

The April 26 Letter relates that the purpose of the Export Controls Audit is to explain existing U.S. and international legal requirements and standards, and, if necessary, advise the [foreign country] how to revise its export controls regime to meet or exceed such requirements and standards. The April 26 Letter confirms that the activities of the Legal Audit Team will be directed and overseen by Embassy officials, making the representation potentially subject to the requirements of FARA.

You represent in the April 26 Letter that the Legal Audit Team intends to limit its activities to the Export Controls Audit and that the members of the Legal Audit Team will not advise Embassy or other [foreign country] officials with respect to any discussions, dialogues, negotiations, or communications with the U.S. government. You further represent that the Legal Audit Team will not communicate with any U.S. government official or segment of the public for the purpose of modifying any U.S. public policy or opinion with regard to the [foreign country] or to enhance the [foreign country]'s standing under the U.S. export controls system.

B. Advocacy Team

The April 26 letter further asserts that several currently registered [law firm] employees (the "Advocacy Team"), acting separately from the Legal Audit Team, intend to provide strategic policy advice to Embassy and other [foreign country] officials regarding export controls. You further represent that results of the Export Controls Audit may be used by [foreign country] officials and the Advocacy Team to inform the advocacy activities. The April 26 Letter states that the Advocacy Team may have direct contacts with U.S. government officials to enhance the [foreign country]'s standing under U.S. export controls systems and/or may recommend modifying existing U.S. export controls policies. The April 26 Letter advises that the Advocacy Team's activities will be disclosed pursuant to FARA under [law firm]'s existing registration for the Embassy.

You represent in the April 26 Letter that the Legal Audit Team's work for the Export Controls Audit will be independent from the Advocacy's Team's work for the Embassy. You note that prior to the audit, one or two of the registered Advocacy Team members will coordinate with Embassy officials to facilitate logistics for the audit process. You further describe that the pre-audit work may involve assigning [law firm] attorneys and experts to the Legal Audit and Advocacy Teams, making introductions between [law firm] personnel and Embassy officials, and identifying [foreign country] contacts and sources of information for Legal Audit Team members to utilize for the audit. The April 26 Letter represents that while participation at the non-substantive pre-audit stage of certain registered agents who will be members of the Advocacy Team is an important predication to the success of the audit, you represent that once the Export Controls Audit begins, no Advocacy Team members will have any involvement in the Export Controls Audit. You represent that after the audit is complete, and a final audit report is published, you expect that the Legal Audit Team's export controls work for the Embassy will conclude, except for answering follow-up questions³ for findings in the audit report. The Advocacy Team will continue to engage in export controls policy work for the Embassy.

You ask whether the FARA Unit concurs with [law firm]'s conclusion that [law firm] personnel on the Legal Audit Team can engage in the audit activities described in the April 26 Letter without incurring a FARA registration obligation.

II. FARA Analysis

[Law firm] is a registered agent of the Embassy⁴ and the [law firm] personnel working on the Advocacy Team, according to the April 26 Letter, have filed or will file short form registrations consistent with [law firm]'s FARA obligations. The question of whether currently non-registered personnel who will be working solely on the Legal Audit Team will be required to register (by filing short-form registrations) turns on whether these individuals, having the requisite relationship with the foreign principal, will be engaging in the enumerated activities in the Act requiring registration. Those activities, set out in Section 611(c)(1) of FARA are:

- (i) engag[ing] in political activities⁵ for or in the interests of the foreign principal;

³ We understand the follow-up questions to be non-substantive and non-political in nature and serve solely to explain items in the audit report.

⁴ *Supra*, fn. 1.

⁵ The term "political activities" means "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." 22 U.S.C. § 611(o).

(ii) act[ing] as a public relations counsel,⁶ publicity agent,⁷ information-service employee⁸ or political consultant⁹ for or in the interests of such foreign principal;

(iii) solicit[ing], collect[ing], disburs[ing], or dispens[ing] contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States[.]¹⁰

Based on the representations in the April 26 Letter, it does not appear that the employees of the Legal Audit Team would be agreeing to engage or engaging in any of the above-identified activities requiring registration under FARA. As you have described them, the research, analysis, and report-production activities that the Legal Audit Team proposes to undertake would not meet FARA's definition of "political activities" because, while those activities may concern the political or public interests of the Embassy, they do not appear intended to influence any U.S. agency or official or any section of the U.S. public with reference to those interests.¹¹ Moreover, by engaging in the proposed activities, the Legal Audit Team would not be acting as a "public relations counsel," "publicity agent," "information-service employee," or "political consultant" for or in the Embassy's interests, as defined by FARA.¹² Additionally, there is also no indication that those activities would involve soliciting, receiving, or providing things of value for or in the Embassy's

⁶ The term "public-relations counsel" includes "any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal." 22 U.S.C. § 611(g).

⁷ The term "publicity agent" includes "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." 22 U.S.C. § 611(h).

⁸ The term "information-service employee" includes "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." 22 U.S.C. § 611(i).

⁹ The term "political consultant" means "any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party." 22 U.S.C. § 611(p).

¹⁰ 22 U.S.C. § 611(c)(1)(i)-(iv).

¹¹ 22 U.S.C. § 611(c)(1)(i).

¹² 22 U.S.C. § 611(c)(1)(ii).

[Requestor]
May 28, 2024
Page 5 of 5

interest, or representing the Embassy's interests before U.S. government officials or agencies.¹³ Consequently, the Legal Audit Team would not be acting as an "agent of a foreign principal" under FARA.

Because the Legal Audit Team would not be acting as an "agent of a foreign principal" if it engages in its proposed activities, its members would not have to register under FARA as long as their activities are limited to those described in your advisory opinion request.¹⁴ [Law firm] would, however, be responsible for reporting the non-registrable activities engaged in by the Legal Audit Team for the Embassy in Item 11 of its Supplemental Statement for each six-month reporting period in which such activities occur.¹⁵

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 at 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

¹³ 22 U.S.C. § 611(c)(1)(iii) and (iv). [Law firm] already discloses its receipts and disbursements relevant to the Embassy's representation as part of its registration.

¹⁴ Because we have reached this conclusion, we need not consider your request for an exemption under Section 613(g) of the Act.

¹⁵ 22 U.S.C. § 612(b).