



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 10, 2017

[addressee deleted]

Re: Advisory Opinion pursuant to 28 C.F.R. §5.2 Concerning Application
of the Foreign Agents Registration Act

Dear [name deleted]:

This is in reference to your letter of July 17, 2017, in which you requested an advisory opinion pursuant to 28 C.F.R. § 5.2 regarding you and your company's possible obligations under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act). You stated in your letter that you are the founder of [foreign company], which distributes [products] that interfaces through a proprietary application with an [foreign company-2], a co-venture partner. You indicated that [foreign company] also is a co-venture partner with [US company] of [US city], which manufactures an American [product]. You further indicated that [foreign company-2] may be under the direction and control or subsidized by the government of [foreign country], and that [foreign company-2] and your company will each have contracts with the [foreign government]. You state that your company may develop other advanced technology and that you envision that your company may lobby the Congress or federal agencies concerning the acquisition of or the institution of pilot programs for the [products] produced by your company.

Based upon these representations, the current activities of your company are commercial in nature and thus qualify for the exemption provided by Section 3(d)(1) of the Act, 22 U.S.C. § 613(d)(1), for private and non-political activities in furtherance of the bona fide trade or commerce of a foreign principal so long as the activities are restricted to those stated in your letter. However, you indicate the possibility that you or your company may lobby the Congress or federal agencies in the future. If you and your company do so, you may choose to register under FARA because you would be acting as an agent of a foreign principal by representing, within the United States, the interests of a foreign principal before any agency or official of the Government of the United States. Alternatively, you could be exempt from FARA registration if you have properly registered under the Lobbying Disclosure Act, 2 U.S.C. § 1601 *et seq.* ("LDA"), because Section 3(h) of FARA, 22 U.S.C. § 613(h), exempts from registration under FARA certain lobbying, including lobbying activities conducted to benefit the bona fide *commercial* interests of "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 U.S.C. § 611(b)(3) (emphasis added).

However, FARA's implementing regulations expressly state that "in no case where a foreign government or foreign political party is *the principal beneficiary* will the exemption under 3(h) be recognized." 28 C.F.R. § 5.307 (emphasis added); *see also* 28 C.F.R. § 5.300 ("The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed."). Please note that the question of obligation or exemption must be revisited as the nature of the activities changes. Therefore, if the nature of your activities on behalf of any foreign entity changes as you anticipate, or in any other way, you should contact this Unit immediately in order that we may reexamine whether you have an obligation to register under FARA at that time.

If you have any questions, please contact me at 202-233-0776.

Sincerely,

[name deleted]
Senior Trial Attorney
Registration Unit