



U.S. Department of Justice

National Security Division

Washington, DC 20530

July 27, 2011

[addressee deleted]

Re: [deleted text]

Dear [name deleted]:

This letter responds to your letter of May 31, 2011, requesting the opinion of the Department of Justice, pursuant to 28 C.F.R. § 5.2, as to whether certain activities of executives of [foreign company] are exempt from registration under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act). The activities in question involve meetings by [foreign company] executives with officials from the Department of Justice, the Federal Communications Commission, and members of Congress about the proposed sale by [foreign company] of [US company owned by foreign company] to [US company]. You predicate your request on FARA's commercial exemptions, 22 U.S.C. § 613(d)(1) and (2).

Your letter states that [foreign company] is located in [foreign country], and has substantial operations in over 50 countries, including ownership of [US company] in [US state]. The [foreign government] owns approximately 15% of [foreign company] and 80% of [text deleted], a development bank. The remainder of the bank is owned by the [foreign federal states]. [foreign bank] owns approximately 17% of [foreign company].

[US company] will pay \$39 billion to [foreign company] for [US company], consisting of \$25 billion in cash and \$14 billion in stock. [foreign company] will obtain an 8% equity interest in [US company] and have a representative on the [US company] Board of Directors. The sale is subject to the regulatory approval of the Department of Justice and the Federal Communications Commission, as well as various committees of the Senate and House. You mention in your letter, in addition to meeting and testifying before the DOJ, the FCC, and committees of the House and Senate, [foreign company] executives "have and will meet with members of Congress to discuss details of the acquisition, address any questions and concerns, and encourage approval of the transaction, which is in [foreign company]'s commercial interests."

You claim in your letter that with respect to this transaction, under 22 U.S.C. § 613(d)(1), the [foreign company] executives "are in no way attempting to influence domestic or foreign policy of the United States, or policies or relations of the [foreign government]. Therefore, consistent with FARA's regulations, [foreign company] executives are engaged in 'private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal."

In your request for an exemption, you indicate that even if the activities of the executives constitute “political activity,” the activities are exempt under 22 U.S.C. § 613(d)(2) since they do not serve predominantly a foreign interest. You cite 28 C.F.R. § 5.304(c) stating that [foreign company] executives are exempt because their activities do not serve predominantly a foreign interests since the activities are not directed by a foreign government or foreign political party, and do not promote the public or political interests of a foreign government or foreign political party, but rather are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation.

Based upon your representations, so long as the activities are restricted to those mentioned in your letter, we find that the activities of the [foreign company] executives are commercial in nature and qualify for the exemption provided by the Act under 22 U.S.C. § 613 (d)(1) for private and nonpolitical activities in furtherance of the bona fide trade or commerce of a foreign principal. In addition, the activities of the executives of [foreign company] are exempt under 22 U.S.C. § 613 (d)(2) because they do not serve “predominantly a foreign interest,” are not directed by a foreign government, and do not directly promote the public or political interests of a foreign government.

If the nature of [foreign company] executive discussions with Congress or other government agencies changes in any way, you should contact this Unit immediately so that we may reexamine whether these individuals or [foreign company] then has an obligation to register under FARA.

If you have any questions, please call me or [name deleted] of my staff at (202)233-0777.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section