



U.S. Department of Justice

National Security Division

Washington, DC 20530

December 3, 2012

[addressee deleted]

Re: Request for an Advisory Opinion for [text deleted]

Dear [name deleted]:

This is in reference to your letter of August 17, 2012, requesting a Rule 2 advisory opinion pursuant to 28 C.F.R. § 5.2, regarding the activities of your clients, [US firm 1], a law firm, and [US firm 2], a government relations firm. You represent both of these entities and we will refer to them together as [US firm], as you did. You ask whether [US firm] is exempt from registration under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act) for its activities in the United States on behalf of [US firm]'s client, [foreign corporation], a company located in [foreign country], and poised to acquire a U.S. company. For the reasons stated below, we find [US firm] is not exempt from registration and advise you of its present obligation to register under the Act.

You assert in your letter that [US firm] has no obligation to register under FARA, and rely on the following exemptions: (1) both commercial exemptions, 22 U.S.C. § 613 (d)(1) and (d)(2); (2) the legal exemption, 22 U.S.C. § 613(g); and the Lobby Disclosure Act (LDA) exemption, 22 U.S.C. § 613(h). You have the burden of establishing the availability of any claimed exemption for your client under 28 C.F.R. § 5.300, and your Rule 2 request must comply with the requirements of 28 C.F.R. § 5.2. All requests for advisory opinions "shall be specific and contain in detail all relevant and material information bearing on the actual activity, course of conduct, expenditure, receipt of money or thing of value, or transaction for which review is requested." Furthermore, the review request must contain the identities of the agents and foreign principals, the "name of the agent's activities for or in the interest of the foreign principal," and any existing or proposed written contract or the full conditions of any oral agreement with the foreign principal.

Your letter indicates that [foreign company] is attempting to acquire a company located in the United States. Admittedly, this U.S. company [foreign company] seeks to acquire is not the foreign principal or foreign agent in this request, but it would help our evaluation to know the name and other relevant information about this company. You did not name the company in your Rule 2 letter nor in [US firm]'s Lobbying Disclosure Act form.

You stated in your request that [US firm 1] is providing legal services to [foreign company], and [US firm 2] provides "government relations services." The only information given about [foreign company] is that it is minority owned by [foreign city investment

corporation], “which is controlled by the [foreign municipal government].” You fail to tell us what minority means and who owns the remainder of this [foreign country] company. Furthermore, you do not indicate who directs or controls the company nor do you explain the voting rights and privileges of owners or stockholders. In addition, there is no mention of the role of the [foreign government], and what connection the [foreign government] has with the [foreign municipal government].

The thrust of your request is that the activities of [US firm] for [foreign company] in the United States are exempt from FARA registration because of the commercial exemptions in 22 U.S.C. § 613 (d)(1) and (2). First, you claim the activities of [US firm] are “private and nonpolitical” commercial activities. Second, you state the activities of [US firm] are neither directed by a foreign government nor do they directly promote the political or public interests of a foreign government or foreign political party.

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that reviews transactions involving the obtaining of possible control of United States businesses by foreign persons to determine the effect of the acquisitions on the national security of the United States. You state that [US firm] will assist [foreign company] in acquiring a U.S. company, in navigating the CFIUS process, and in educating U.S. policymakers about [foreign company]’s business operations and proposed acquisition of a U.S. company. [US firm] has registered to lobby Congress under the LDA for [foreign company]. Based on the information provided and without further information, we find the lobbying of Congress and the education of U.S. policymakers about the proposed acquisition by [foreign company], minority owned by [foreign municipal government], is political activity in as much as it is an attempt to in any way influence the domestic or foreign policy of the United States and the political or public interests of the [foreign country]. We consider the activity of [US firm] for [US company] as not covered by the commercial exemptions.

Likewise, we reject your reliance on the legal and Lobbying Disclosure Act exemptions. The anticipated activities of [US firm] exceed the activities permitted under the legal exemption, and the Lobbying Disclosure Act exemption is not permitted where a foreign government is the principal beneficiary.

The factual background of your Rule 2 request, as well as your exemption claims, is inadequate for us to validate your proposed exemption from registration and therefore, [US firm 1] is required to register under FARA. If you have any questions, please call me at (202) 233-0777.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section