



U.S. Department of Justice

National Security Division

Washington, DC 20530

December 7, 2010

[addressee deleted]

Re: [text deleted]

Dear [name deleted]:

This responds to your letter of September 15, 2010, requesting the opinion of the Department of Justice, pursuant to 28 C.F.R. § 5.2, as to whether certain activities of your firm will result in registrable activity under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611, *et seq.* (FARA or the Act). In addition, you ask whether the present fee arrangement that your firm has with [foreign government] is a contingent fee contract prohibited under Section 8(h) of FARA, and whether your fee arrangement with [US firm] is prohibited under Section 8(h) of the Act.

Your firm is chief counsel for the plaintiffs, the [foreign government] and several of its Districts, in a suit pending in the [text deleted] District, against [multinational distributor] for money laundering, loss of tax revenue, and competitive harm by [text deleted]. [text deleted]. [foreign government] seeks damages against the defendants for both loss of commercial profits and tax revenues. You indicated that the revenue rule precludes the courts of one country from enforcing the tax laws of another country. Citing the revenue rule, the district court dismissed all of [foreign government's] damages for lost tax revenues. The court did not dismiss the damages for [foreign government] commercial losses.

You claim the revenue rule can be waived by the executive branch of the United States, and the damages for plaintiffs' loss of tax revenues reinstated by the district court. Your firm plans to meet with the State Department and seek to have them waive the rule in this case and communicate this to the district court. You hired [US firm] to assist you in persuading the State Department to waive the rule.

Ordinarily, your legal activities on behalf of the [foreign government] and its Districts would not require registration under FARA. The Act provides an exemption to registration in 22 U.S.C. § 613(g) for legal activities before any court of law or agency of the Government so long as the activities do not attempt to influence officials other than in the course of the judicial proceeding or in agency proceedings conducted on the record. Rule 28 C.F.R. § 3.06 states the activity requiring registration must be political as defined in 22 U.S.C. § 611(o). Discussions with the State Department in this case do not fall within the usual parameters of the attorney's exemption. We consider your activities with the State Department to be political activities as defined in 22 U.S.C. § 611(o). Those activities require registration under 22 U.S.C. § 612(a), and we have processed your registration accordingly.

We have reviewed your fee agreement with the [foreign government] and find the success of winning your case through settlement or jury verdict are not contingency contracts in violation of Section 8(h) of FARA. If your fees are tied to the success of waiver of the revenue rule by the court, and either your firm, or [US firm], receives payment based on that success, even if your client loses the case, then it would be a contingency contract based on the success of political activity. However, from the information provided, it appears that there will be no payments made unless the outcome of the actual court proceedings is successful for your client.

If you have any questions, please contact [name deleted] at (202) 514-1216.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division