



**U.S. Department of Justice**

National Security Division

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Washington, DC 20530

April 9, 2013

[addressee deleted]

Re: [text deleted]

Dear [name deleted]:

This responds to your request of February 26, 2013, for another advisory opinion under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act). You represent [US law firm], a law firm located in Washington, DC. On December 3, 2012, we provided you with an advisory opinion on [US law firm]'s proposed activities for [foreign bank]. Later, we met with you and representatives from [US law firm]. Based upon the information provided, we conclude that [US law firm] is obligated to register under the Act if it engages in political activity for [foreign government] and [foreign bank].

It is our understanding that [US law firm]'s goal is to obtain a specific license from OFAC permitting direct payments to be made between U.S. financial institutions and [foreign bank] in connection with the licensed exports of food, medicine, and medical devices to [foreign country]. [US law firm] plans to draft the specific license request, and file it with OFAC. A major obstacle to the [US law firm] objective is that Executive Order [number deleted] blocks U.S. financial institutions from engaging in any transactions with any [foreign bank]. OFAC, in a Specially Designated Nationals Update of [date deleted], named [foreign bank] as an [foreign country] bank covered by Executive Order [number deleted]. This Executive Order means that the President of the United States, because of U.S. foreign policy issues with [foreign country] and the [foreign country] banking system, has precluded U.S. financial institutions from dealing with [foreign bank].

We understand for [US law firm] to accomplish its goal it will need to successfully perform three tasks: (1) obtain a specific license from OFAC to engage in lobbying activities, as requested in its letter of [date deleted]; (2) promote direct banking relationships between U.S. banks and [foreign bank] by engaging in political activities in the United States, which target executive and legislative officials and the public; and (3) request and obtain a special license from OFAC, which permits direct payments for food, medical, and medical devices to U.S. financial institutions by [foreign bank].

If a person engages in political activities on behalf of a foreign principal, as listed in 22 U.S.C. § 611(c)(i), the person is an agent of a foreign principal under FARA. The term "political activities" as defined in the Act 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 interest, policies, or relations of a government of a foreign country or a foreign political party.

[US law firm] has requested a special license from OFAC for [foreign bank] and intends to file an additional one for [foreign bank] to permit direct payments to U.S. financial institutions. The phrase “formulating, adopting, or changing” in the definition of “political activity,” and as applied to the domestic and foreign policy of the United States is defined in 28 C.F.R. § 5100(e). We consider the request for a special license on [date deleted], and the future request for a license by [US law firm] to be part of established and routine administrative OFAC procedures; consequently, these requests are not attempts to change U.S. domestic or foreign policy, and registration is not required. If extraordinary methods, activities outside the usual OFAC application process, are employed by you or your client, then we may consider this political activity requiring registration under FARA.

You describe potential lobbying by [US law firm] establishing direct banking services between [foreign bank] and U.S. financial institutions to include presenting proposals to Congress, non-governmental organizations, special interest groups, and the public, as well as proposing legislation to Congress. These activities are political and would require registration under FARA. You write in your most recent letter that [US law firm] will notify the Department of Justice if and when OFAC agrees to permit [US law firm] to lobby in this manner. There is no need to consult with the Department of Justice in the future about engaging in these types of political activities. If, at any time, [US law firm] engages in these activities [US law firm] must register under FARA within ten days of becoming an agent for [foreign bank], or prior to acting. If [US law firm] engages in any political activities for [foreign bank], then it must register under FARA.

You indicate that the activities [US law firm] will engage in are solely for [foreign bank], and rely on the commercial exemptions in 3(d) and the Lobbying Disclosure Act exemption in 3(h). We find [foreign country] and its banking system to be bound together for purposes of your requests for exemption. We consider the use of [foreign country] sanctions against [foreign country] and the [foreign country] banking system to be part of U.S. foreign policy and not commercial. Furthermore, we consider the Government of [foreign country] and [foreign bank] as principal beneficiaries under 28 C.F.R. § 5.307, and this precludes [foreign bank] from claiming the Lobbying Act Disclosure exemption.

As stated in our letter of December 3, 2012, any political activities engaged in by [US law firm] for [foreign bank] will serve predominantly the foreign interest of [foreign country] and will directly promote the political and public interest of [foreign country]. Any “political activity” on the behalf of [foreign bank] will therefore require immediate registration under FARA.

If you have any questions, or if I can be of further assistance, please call me at (202) 233-0777.

Sincerely,

Heather H. Hunt, Chief  
Registration Unit  
Counterespionage Section