



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 5, 2018

[addressee deleted]

Re: Advisory Opinion pursuant to 28 C.F.R. §5.2 [text deleted]

Dear [name deleted]:

This is in reference to your letter of November 2, 2017, in which you requested an advisory opinion pursuant to 28 C.F.R. § 5.2 regarding the possible obligation of your company, [U S company], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”).

The purpose of FARA is to inform the American public of the activities of foreign agents working for foreign principals to influence U.S. government officials and/or the American public with reference to the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party. An “agent of a foreign principal” is defined, in pertinent part, as “any person who acts ...at the order, request, or under the direction or control of a foreign principal ...and who directly or through another person ... engages within the United States in political activities for or in the interests of such foreign principal.” 22 U.S.C. § 611(c)(1)(i). The term “political activities” is defined in 22 U.S.C. § 611 (o) as “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 interests, policies, or relations of a government of a foreign country or a foreign political party.” The term “foreign principal” includes “a government of a foreign country and a foreign political party, any person outside the United States.. ., and 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.” *Id.* § 611(b).

[US company]’s client [Delaware corporation] is a corporation formed in Delaware with a registered address in Wilmington, Delaware. [US company] provides government relations services, pursues grant and incentive funding and supports company procurement efforts at the federal and state government levels for [Delaware corporation]. [Delaware corporation] is an indirect 100% owned subsidiary of [public company]. [Public company] is owned by its parent company, [public company 2], which itself is 51.1% owned by [foreign government]. [Delaware corporation] has a strong interest in [text deleted] related product markets, and is developing [text deleted] and derivatives project in the [region] of the United States, specifically in [US

state], with construction commencing in 2018 and lasting four to five years at a cost up to \$8 billion. [US company] is registered under the Lobbying Disclosure Act, 2 U.S.C. §1601 et seq. (“LDA”) for its work for [Delaware corporation].

Based upon these representations, we will not contest that the current activities of [US company] are eligible for the exemption pursuant to Section 3(h) of FARA, 22 U.S.C. §613(h) for engaging in lobbying activities and having registered under the LDA in connection with [US company]'s representation of [Delaware corporation]. That exemption applies to 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). Please note however that the question of obligation or exemption must be revisited as the nature of the activities changes. Thus, if [US company]'s activities change in that they are directed to engage in political activities by [foreign government] or a foreign political party that directly promote the public or political interests of [foreign government] or the foreign political party, a registration under FARA would be required. 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). Under those facts, [foreign government], being the 51.1% owner of the ultimate parent company of [Delaware corporation], would be considered as the principal beneficiary of [US company]'s political activities. In this event, [US company] should contact this Unit immediately in order that we may reexamine whether it has 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