



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

February 9, 2018

By E-mail and U.S.P.S.

[addressee deleted]

Re: Advisory Opinion pursuant to 28 C.F.R. §5.2 concerning Application of the Foreign Agents Registration Act

Dear [addressee deleted]:

This is in reference to your letter of February 1, 2018, in which you requested an advisory opinion pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, [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").

As you are aware, 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. 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." 22 U.S.C. § 611(b). Generally, an "agent of a foreign principal" must register under FARA if it acts "at the order, request, or under the direction or control of a foreign principal," and engages in one of the following activities:

- (i) engages within the United States in political activities for or in the interests of such foreign principal;
- (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.]

22 U.S.C. § 611(c).

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You have informed us that [company] is a [compliance and consulting firm]. You indicate that [company] is not registered as a lobbyist pursuant to the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* (“LDA”), and that it does not provide government relations, public relations or political consulting services.

[Company] proposes to provide a variety of services to the [foreign state bank], the central bank of [foreign country], which was created through legislation enacted by [the legislature] of [foreign country] in [year]. These services would be provided through a contract that [company] has entered into with the law firm of [US law firm]. [US law firm] was retained by [foreign state bank] to provide legal advice and services related to [foreign state bank]’s compliance with anti-money laundering and combating the financing of terrorism (“AML/CFT”) rules. [Company] will provide its services to assist [US law firm] with [US law firm]’s rendering of legal advice and provision of legal services. You have informed us that the services to be provided by [company] fall into three categories: (1) an initial assessment of [foreign state bank]’s cybersecurity programs and its policies and programs concerning anti-money laundering and combating the financing of terrorism, including their key components of the aforementioned programs and identifying gaps and assessing how to address them; (2) limited outreach arranged by [US law firm] with officials of U.S. banks and financial institutions as well as with officials of federal regulatory agencies such as the Federal Reserve Board and the Comptroller of the Currency, including strategic advice but no advocacy in either meetings; and (3) direct outreach with the above described financial institutions and federal agencies to familiarize them with [foreign state bank]’s programs to demonstrate its suitability for establishing commercial relationships with U.S. financial institutions, but does not include efforts to influence U.S. government policy.

[Foreign state bank] is considered a “foreign principal” pursuant to the definition set out at 22 U.S.C. § 611, and to the extent that [company] is engaged within the United States in representing the interests of [foreign state bank] before any agency or official of the Government of the United States, pursuant to a contract it has with [US law firm], it would be acting as an agent of a foreign principal under FARA. *See* 22 U.S.C. § 611(c)(1)(iv).

You indicate that [company], through its strategic advice and direct outreach activities described above, does not intend “to influence a U.S. audience with ‘reference to formulating, adopting, or changing’ U.S. domestic or foreign policy.” You further indicate that the services intended to be provided by [company] are “nonpolitical” and that [company] will not “advocate for any change in U.S. domestic or foreign policy, including legislation, executive agreements, or decisions related to departmental or agency policy.” However, [company]’s appearances in front of the Federal Reserve Board and the Comptroller of the Currency fall squarely within those activities outlined in Section 611(c)(1)(iv) of the Act. Moreover, we do not concur with your assertions that these activities are exempt from registration under Section 613(d)(1) because they are “private and non-political activities in furtherance of the principal’s bona fide trade or commerce,” and that these activities also are exempt from registration under 613(d)(2) because they do not serve predominantly a foreign interest.

[addressee deleted]

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We have determined that [company] does not qualify for either of the exemptions under Section 613(d). The nature and extent of activities proposed to be undertaken by [company] on behalf of [foreign state bank] would not qualify for the exemption under Section 613(d)(1) of FARA because the activities would directly promote the public interests of [foreign country]. *See* 28 C.F.R. §5.304(b). The purpose and intent of [company] providing strategic advice and recommendations, as well as the direct outreach to U.S. federal financial regulatory agencies on behalf of [foreign state bank], the central bank of [foreign country], would be to “demonstrate [foreign state bank]’s suitability for establishing commercial relationships with U.S. financial institutions.” As such, these activities directly promote the public interests of [foreign country]. For the same reason, these activities would not qualify for the exemption in Section 613(d)(2) because they do serve predominantly a foreign interest in that they directly promote the public interests of [foreign country]. *See* 28 C.F.R. §5.304(c).

In conclusion, we believe that [company] is required to register pursuant to FARA if it engages in the activities set forth in your letter. If you have any questions or wish to meet with us regarding our determination, please contact [name deleted] by telephone at (202) 233-0776 or by email to FARA.public@usdoj.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather H. Hunt", with a long horizontal flourish extending to the right.

Heather H. Hunt
Chief, FARA Registration Unit