



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

June 22, 2017

[addressee deleted]

Re: [text deleted]

Dear [name deleted]:

We write in response to your letter of June 9, 2017, in which you request an opinion pursuant to 28 C.F.R. § 5.2(a) with respect to the registration status of your clients, [US company], and [US company], pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or “Act”).<sup>1</sup> Based upon the representations made in your letter and the draft consulting agreement provided with the letter, we have determined that your clients do not currently have an obligation to register under FARA.

According to your letter, [US companies] are vehicles for consulting services provided by [US individual] and [US individual]. According to your letter and the draft consulting agreement, [US companies] are to be retained by [foreign company], a [foreign country] Corporation, with operations in the [foreign country], to provide advice concerning political, economic, security, and diplomatic matters facing [foreign country]. The draft consulting agreement specifically provides that [foreign company] will not ask [US companies] to engage in any activity that would require registration under FARA.

Generally speaking, a party is an “agent of a foreign principal” who 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 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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<sup>1</sup> We also note our other contacts on this matter. Specifically, we note your letter of April 28, 2017, our meeting of May 23, 2017, and our telephone call of June 6, 2017.

Our analysis and ultimate conclusion regarding your clients' obligations under FARA is based in large part upon the representations in your June 9<sup>th</sup> letter and the scope of services portion of the proposed engagement agreement which was provided along with your letter. Specifically, your clients would provide advice to [foreign company] regarding the policies of [foreign country] in order to improve the overall global standing of [foreign country] and its relations with countries other than the United States. The advice to be given to [foreign country], and by implication, the government of [foreign country], could include:

- (i) levels and types of [foreign country]'s defense expenditures;
- (ii) avenues for improving trade relations with [another foreign country];
- (iii) domestic policies that could attract more foreign investment to [foreign country];
- (iv) cyber security measures; (v) regional security cooperation;
- (vi) enhancing [foreign country]'s domestic defense production; and
- (vii) opportunities for [foreign country] to advocate for its position on gay rights.

We note that both your letter and the scope of services portion of the proposed engagement agreement list ten (10) categories of activities that, if performed by your clients, would precipitate an obligation to register under the Act. You have represented, and the proposed engagement agreement specifies, that your clients will not perform any of these services for [foreign company].

We further note that your letter and the scope of services portion of the proposed engagement agreement contain a commitment on the part of your clients not to engage in any of the contemplated activities within the United States. Your letter includes an analysis of FARA which asserts that even if your clients were to engage in activities that would normally require registration under the Act, they would still not be required to register under FARA because they would be physically outside the United States at the time of performance or delivery of the service. Please be advised that we do not concur with this analysis of FARA and that the determination made in this letter is limited to the facts that you have presented to us. Therefore, if any of the facts with respect to your clients' activities depart, in any way, from those described in your letter and in the proposed agreement, whether occurring inside or outside the United States, please notify us, as your clients' registration status may change.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [FARA Unit Attorney] or me by telephone at 202-233-0776, if you have any questions.

Sincerely,

Heather H. Hunt, Chief  
Registration Unit