



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 6, 2018

Via Email and First Class Mail

[addressee deleted]

Re: [US company]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

We write in response to your letter of September 13, 2018, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of your client, [US company], and its principals, [foreign company] and [foreign state-owned company], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations made in your letter, and limited to the specifics of those representations, we have determined that [US company] is currently exempt from registration under the Act.

We understand, through the representations and attachments contained in your September 13, 2018, letter, that [US company] has been retained by [foreign company] to help with promotion of [conference in a foreign country]. As noted in your letter, [foreign conference] is a [conference] that has been held on an annual basis in [foreign country] since [year deleted], and features international participation by [text deleted].¹ [Conference] is hosted by [foreign state-owned company], a state-owned entity, and is sponsored by a number of [private companies], state-owned enterprises, and government agencies.²

According to your September 13, 2018, letter, [US company] was hired by [foreign company] to serve as a liaison with media outlets internationally and to hold events with industry leaders in [foreign countries], and other potential locations to promote the conference. In this role, according to your letter, [US company] would potentially interact with U.S. media outlets related to [conference] and your letter further notes that [foreign company] is considering an event in the United States to promote [conference]. Your September 13, 2018, letter asserts that [US company] does not plan to solicit funds in the United States or communicate with any U.S. government officials while promoting [conference] in the United States. [US company] would limit its activities in the United States to promoting the conference to [text deleted] at the direction of [foreign company] and its client, [foreign state-owned company].

¹ [text deleted]

² [text deleted]

Your September 13, 2018, letter conveys an assertion that the potential activities in which [US company] would be engaging in the United States should be exempt from registration under FARA pursuant to Section 3(d)(1) and 3(d)(2) of the statute. Our analysis of your claim follows.

Generally speaking, FARA is a disclosure statute which requires registration of “agents of foreign principals” who are engaged in “political activities” or other specified activities under the Act, absent an exemption. Under the Act, an “agent of a foreign principal,” required to register, means—

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

(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 contribution, 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; and

(2) any person who agrees, consents, assumes or purports to act as, or who holds himself out to be, whether or not pursuant to a contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

22 U.S.C. § 611(c).

According to the representations made in your September 13, 2018, letter, [US company] is acting as a publicity agent³ under the Act on behalf of its foreign principals, [foreign company] and [foreign state-owned company], and in the ordinary course, would be required to register under the Act. We evaluate your claim of an exemption pursuant to Section 613(d)(1) and (d)(2) of the Act in light of the proposed activities outlined in your letter, which you claim to be private and nonpolitical in nature, and application of the legal standards applicable to Section

³ The term “publicity agent” includes any person who engages directly or indirectly in the publication or dissemination or oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspaper, lectures, broadcasts, motion pictures or otherwise. 22 U.S.C. § 611(h).

613(d)(1) and (d)(2).⁴

The “commercial” exemption contained in FARA applies to:

Any person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest; . . .

22 U.S.C. § 613(d).

With respect to the first portion of the exemption which discusses private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal, we acknowledge that the exemption applies to activities undertaken on behalf of foreign principals which are state-owned corporations. The state-owned aspect of the corporation does not necessarily disqualify the activities from being private, “so long as the activities do not directly promote the public or political interests of the foreign government.”⁵ While [foreign state-owned company]’s status as a state-owned corporation would not disqualify [US company] from being eligible for the exemption contained in Section 613(b)(1) of the Act, we do not find that [US company]’s planned activities in the United States are completely “private and nonpolitical.”

We take note of the [materials] prepared by [US company], and included with your September 13, 2018, letter, which includes statements which are inherently political in nature, and which also serve the interests of [foreign government] and [foreign country], although indirectly. Two examples in the [materials] are (1) [a statement regarding foreign government industry leadership] and (2) [a statement that US company will author op-eds on behalf of a foreign government]. We consider this type of messaging to be inherently political in nature, although its support of the public and political interests of [foreign country], is indirect, through the filter of [foreign company] and [foreign state-owned company]⁶ Thus, [US company] does not qualify for the exemption set out at 22 U.S.C. § 613(d)(1).

Alternatively, we find that [US company] does qualify for the exemption set out at 22 U.S.C. § 613(d)(2), in that we consider their activities are “not serving predominantly a foreign interest.” The regulations implementing FARA further clarify the exemption:

For the purposes of section 3(d)(2) of the Act, a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or

⁴ We note that pursuant to 28 C.F.R. § 5.300, “the burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.”

⁵ 22 C.F.R. § 5.304(b).

⁶ *Id.*

political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.

22 C.F.R. § 5.304(c).

Because [US company] will be engaging in some political activities, we look to the exemption contained in Section 3(d)(2), as being more applicable. We find that although [US company] will be promoting the public and political interests of [foreign country], albeit indirectly, the political activities directly further the bona fide commercial interests of [foreign state-owned company], a foreign, government-owned corporation, and [foreign company]. Importantly, we find that the political activities are not directed by [foreign government] or [foreign country], and the political activities undertaken by [US company] do not directly promote the public or political interests of a foreign government or foreign political party. We consider the benefits to be indirect and incidental to [US company]'s work promoting [conference], as long as [foreign government] and [foreign country] refrain from directing any of [US company]'s activities.

Accordingly, we view the above-described activities of [US company] on behalf of [foreign state-owned company] and [foreign company] to be exempt from registration under FARA pursuant to Section 3(d)(2) of the Act. If any of [US company]'s activities differ in any way from the activities described in your September 17, 2018, letter, then we ask that you re-engage with this office to evaluate a possible obligation to register under FARA.

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

Sincerely,

Heather H. Hunt, Chief
FARA Registration Unit