U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

August 16, 2019

Via Email and USPS
[addressee deleted]

Re: Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name deleted]:

We write in response to your letter of June 19, 2019 ("June 19 Letter"), 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], 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 in your letter and the proposed Letter Agreement ("Proposed Agreement"), we have concluded that [US company] is obligated to register under the Act.

As described in the June 19 Letter and Proposed Agreement, we understand that the [foreign government] will be appointing [US company] to be its exclusive agent in the United States to recruit and help process the applications of U.S. citizens who are seeking to obtain [foreign country] citizenship through [foreign government program].[1] According to open source information, [foreign government program] is a program in which the [foreign government] solicits significant investments from individuals in exchange for [foreign country] citizenship.[2] Under the Proposed Agreement, [US company] will provide a marketing campaign, "use its good faith efforts to have current U.S. Citizens apply for citizenship in [foreign country] pursuant to the [foreign government program]," process paid applications for [foreign country] citizenship, and provide advisory, consultation, and expediting services to [foreign government program] applicants. [US company] will be compensated through fees charged to applicants for [foreign country] citizenship for processing their applications, and fees to be paid by the [foreign government] for each approved application for citizenship. The [foreign government] has agreed to fund 50 percent of the costs of the marketing campaign (up to $125,000), and provide significant investment incentives to [US company] to introduce the [foreign government program] into the United States.

As part of the [foreign government program], the [foreign government] set up a [national

[1] We note that [US company] will also be a non-exclusive agent for non-U.S. citizens seeking [foreign country] citizenship through the [foreign government program]. It is unclear whether these persons may be located in the United States. To the extent that such persons are located inside the United States, then the same analysis would apply to this group as for U.S. citizens domiciled in the United States.

[2] [text deleted].

fund] to receive and disburse funds under the [foreign government program].[3] Funds collected pursuant to the [foreign government program] are to be utilized to support real estate projects, "enterprise projects," and the purchase of non-interest bearing government bonds.[4] These investments are designed to draw foreign capital to the country, to benefit [foreign country]'s economic development and well-being. In exchange, the [foreign government] offers citizenship, which it characterizes as "offering an identity, a people and our place in the world, clearly promoting the status of [foreign country] to the American public."[5]

Generally speaking, FARA is a disclosure statute which, absent specific exemptions, requires registration of "agents of foreign principals" who are engaged in "political activities" or other specified activities under the Act. 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; or
> >
> > (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.

22 U.S.C. § 611(c).

With respect to [US company]'s status under FARA, we first note that the [foreign government], as a party to the Proposed Agreement, is a foreign principal. The term "foreign principal" under the Act, includes "a government of a foreign country." 22 U.S.C. § 611(b)(1). [US company] is an agent of the [foreign government] by means of its agreement to perform specified activities under the Proposed Agreement in exchange for payment. In other words, as a party to the Proposed Agreement, [US company] has agreed to act at the "direction or control" of the [foreign government]. FARA's implementing regulations provide that "the term *control* or any of its variants shall be deemed to include the exercise of the power, directly or indirectly, to determine the policies or the activities of a person . . . by contract, or otherwise." 28 C.F.R. §

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[3] [text deleted].
[4] [text deleted].
[5] [text deleted].

5.100(b). The Proposed Agreement is evidence of such agency.

Your June 19 Letter asserts that the Proposed Agreement does not contemplate that [US company] would be engaging in political activities. We do not concur. As set out in FARA, "the term 'political activities' means any activity that the person engaging in believes will, or that the person intends to, in any way influence . . . any section of the public within the United States . . . with reference to the political or public interests, policies, or relations of a government of a foreign country or of a foreign political party." 22 U.S.C. § 611(o). [US company]'s marketing campaign and other activities soliciting investments from persons in the United States to the [foreign government program] is clearly in the public interests of [foreign country], and thus are "political activities" under the Act.

[US company]'s proposed activities also come under the purview of FARA for reasons that extend beyond the fact that they are "political." First, [US company] will be soliciting funds under the [foreign government program] for and in the interest of the [foreign government]. This conduct falls within the activities described at Section 611(c)(1)(iii), that is, collecting and disbursing money in the interest of a foreign principal. Second, to the extent that [US company] will be engaging in a marketing campaign for the [foreign government], it would be acting as a "publicity agent" under the Act.[6]

Your June 19 Letter asks whether the exemption to FARA registration set out at Section 3(d) of the Act would be applicable to the activities outlined in the June 19 Letter and Proposed Agreement. It does not. Section 3(d)(1) of the Act exempts "private and nonpolitical activities in furtherance of the bona fide trade and commerce of such foreign principal." 22 U.S.C. § 613(d)(1). FARA's implementing regulations note that activities of an agent "in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered 'private,' even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government." 28 C.F.R. § 5.304(b). We conclude that the exemption does not apply to the activities outlined in your June 19 Letter and Proposed Agreement because the activities directly promote the public and political interests of the [foreign government], as noted above.

Your June 19 Letter also requests guidance with respect to answering Item 12 of the Supplemental Statement (concerning political activities undertaken by the registrant) in a contemplated [US company] registration, specifically whether it would be required to list business meetings with U.S. citizens interested in the [foreign government program]. With respect to such meetings with private individuals, you are required to disclose the fact that you have met with a number of individuals and performed services relating to the [foreign government program] and describe the nature of the services provided. However, you are not

[6] Under FARA, '[t]he term 'publicity agent' includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise." 22 U.S.C. § 611(h).

required to disclose individual names and other identifying information.[7]

The June 19 Letter further seeks our view regarding the payment structure for [US company] set out at Paragraph 13 of the Proposed Agreement, in which [US company] would be entitled to an additional fee based upon the approval for citizenship by the [foreign government] of applications submitted by [US company]. This arrangement would violate Section 618(h) of FARA, which prohibits payments of fees or other remuneration if it "is contingent in whole or in part upon the success of any political activities carried on by such agent." 22 U.S.C. § 618(h). Because we have determined that [US company] would be engaging in "political activities," it is prohibited under the Act from accepting a contingent fee. *Id.*

Please effect [US company]'s registration within 10 days of such time as it agrees to act as an agent of a foreign principal as outlined in your June 19 Letter and in our response. Instructions on how to register may be found on our website, www.fara.gov.

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

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit

[7] The June 19 Letter also poses a hypothetical question of what [US company]'s registration status would be if it chose not to participate in the development of the "marketing campaign" outlined in the Proposed Agreement, but undertook the other services described therein. Pursuant to 28 C.F.R. § 5.2(b), we do not answer hypothetical questions. Nevertheless, as described above, [US company]'s registration obligations extend beyond its development of the marketing campaign.