



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 17, 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 March 14, 2019 (“March 14 Letter”), requesting an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of your client, [US FIRM], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Your letter seeks exemption from FARA’s registration obligations pursuant to the commercial exemption outlined in Section 613(d) of the Act and the Lobbying Disclosure Act (“LDA”) exemption set out at Section 613(h) of the Act. Having reviewed the facts stated in your letter, we have determined that [US FIRM] is not entitled to an exemption and is obligated to register under FARA.

**I. Relevant Facts**

According to the March 14 Letter, [US FIRM] is a full-service law firm, with offices throughout the United States, in addition to offices in [foreign countries]. [US FIRM] has been retained to provide consulting services to a [foreign country] law firm, [Foreign Firm], with respect to U.S. laws and major policy issues.<sup>1</sup> Your request for an advisory opinion centers on work [US FIRM] has undertaken for two of [Foreign Firm]’s clients – [Foreign Company 1] and [Foreign Company 2]. Both clients are currently on the U.S. Department of the Treasury’s Office of Foreign Assets Control’s (“OFAC”) Sectorial Sanctions Identifications List (“SSI List”).<sup>2</sup> As noted in your letter, the SSI List restricts U.S. persons from engaging in certain transactions with certain sectors of the [foreign country] economy.<sup>3</sup> The work undertaken by [US FIRM] to service [Foreign Firm]’s clients, [Foreign companies 1 and 2], relates to their status on OFAC’s SSI List.

The March 14 Letter describes [US FIRM]’s work for [Foreign Firm]’s client [Foreign Company 1], “[Foreign country]’s large state-owned global [industry] company,” to involve U.S. sanctions policies, a topic “of particular interest” to [Foreign Company 1].<sup>4</sup> The letter notes that [US FIRM]’s representation does not involve any lobbying or outreach to U.S. policy makers to

<sup>1</sup> A copy of [US FIRM]’s engagement letter to represent [Foreign Firm] and a sample report prepared by [US FIRM] for [Foreign Firm] was provided to the FARA Unit.

<sup>2</sup> [text deleted].

<sup>3</sup> [text deleted].

<sup>4</sup> March 14 Letter at 2.

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obtain information for its client.<sup>5</sup> Rather, according to the March 14 Letter, [US FIRM]’s activities will be limited to utilizing public source information to collect “business and political intelligence.”<sup>6</sup>

According to the March 14 Letter, [US FIRM] was also retained by [Foreign Firm] to provide public relations services to [Foreign Firm]’s client, [Foreign Company 2].<sup>7</sup> This public relations work, for the benefit of [Foreign Company 2], would be to engage in an education and public relations campaign to “educate the U.S. public and U.S. policymakers regarding [Foreign Company 2]’s role as a financial service institution, and to make it clear that [Foreign Company 2] is not engaged in any campaign that would undermine U.S. sanctions against [foreign country].”<sup>8</sup> [US FIRM] has, in turn, subcontracted the public relations work to [US LLC].<sup>9</sup>

## II. FARA Analysis

FARA requires the registration of “agents of foreign principals” engaged within the United States in “political activities” or other specified activities. 22 U.S.C. § 611(c) & (o). Among the activities triggering registration are acting within the United States “as a public relations counsel, publicity agent, information-service employee or political consult for or in the interests of . . . [a] foreign principal.” 22 U.S.C. § 611(c)(1)(ii). An agent is acting as a political consultant if it “engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611(p). Under this definition, [US FIRM] is acting as a political consultant.

Even if agency under FARA is established, a foreign agent may qualify for one of the exemptions set out in 22 U.S.C. § 613. To that end, you have asserted that [US FIRM] is entitled to the exemptions set out at Section 613(d) (“commercial exemption”) and Section 613(h) (“LDA exemption”) of FARA. Under FARA’s implementing regulations, “[t]he 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.” 28 C.F.R. § 5.300.

As a preliminary matter, despite the assertions contained in the March 14 Letter, [US FIRM] has an agency relationship with both [Foreign Firm] and [Foreign Company 1]. Both [Foreign Firm] and [Foreign Company 1] are foreign principals under FARA.<sup>10</sup> Because [US FIRM] has a direct contractual relationship with [Foreign Firm] and, under the definition set out above, is performing political consulting services for the benefit of [Foreign Firm]’s client,

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 2-3. Because the public relations services have been subcontracted, the potential registration obligations resultant from such services inure to [US LLC] and are derivative of [US FIRM]’s obligations.

<sup>10</sup> Under FARA, the term “foreign principal” includes “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). Since [Foreign Company 1], as noted in the March 14 Letter, is a state-owned enterprise, the [foreign country] may be an additional foreign principal. *Id.* at § 611(b)(1).

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[Foreign Company], [US FIRM] is an agent of both foreign principals.<sup>11</sup> We examine your claims of exemption in light of these relationships.

Under Section 613(d) of FARA, an agent of a foreign principal may be exempt from FARA's registration requirements if it engages "*only* (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal; or (2) in other activities not serving predominantly a foreign interest." 22 U.S.C. § 613(d). With respect to the first part of the exemption, we find that [US FIRM]'s activities are neither. Although the March 14 Letter asserts that [US FIRM]'s activities are private because they are limited to educating [Foreign Firm] about U.S. laws and policies, we do not view [US FIRM]'s activities as so limited.<sup>12</sup> [Foreign Company 1], as admitted in other portions of the letter, is a beneficiary of [US FIRM]'s consulting activities, and since [Foreign Company 1] is a [foreign government]-owned [industry] company, [foreign government] also benefits from the consultancy. Therefore, the limitation set out in FARA's implementing regulations regarding "private" activities is inapposite.<sup>13</sup> Moreover, it cannot be said that [US FIRM]'s consulting services in furtherance of providing advice on sanctions-related policy is nonpolitical. The Executive Order [number deleted] that precipitated [Foreign Company 1]'s placement on the SSI List is inherently political, with the President of the United States specifically finding "that [text deleted]". Since the exemption specifically requires that the agent's activities be both "private" *and* "nonpolitical," [US FIRM] is not entitled to it.

Likewise, with respect to the second prong of the commercial exemption, "other activities not serving predominantly a foreign interest,"<sup>14</sup> we find that [US FIRM] has not met its burden to establish its entitlement to this exemption. FARA's implementing regulations do provide for application of the exemption for "political activities . . . directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities do not directly promote the public or political interests of a foreign government or foreign political party." 28 C.F.R. § 5.304(c). [US FIRM]'s political consultant activities are not being undertaken in direct furtherance of the bona fide commercial, industrial, or financial operations of its foreign principals. Because [US FIRM] specifically is providing political intelligence about U.S. sanctions policy to the benefit of [Foreign Company 1], a [foreign government]-owned [industry] company, its activities are tantamount to "directly promoting the political interests of a foreign government." *Id.*

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<sup>11</sup> A person is an "agent of a foreign principal" if the person acts "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, in whole or in major part by a foreign principal, . . ." 22 U.S.C. § 611(c)(1).

<sup>12</sup> The letter also asserts that because [Foreign Firm] is not owned or controlled by the [foreign government], [US FIRM]'s activities should be considered "private" under FARA. The issue is not [Foreign Firm]'s status, but that of [Foreign Company 1], which is owned by the [foreign government], and whose interests are closely intertwined with the [foreign government].

<sup>13</sup> The activities, undertaken in light of [Foreign Company 1]'s placement on the SSI list, are not in furtherance of [Foreign Company 1]'s bona fide trade or commercial interests. They are in furtherance of assessing and potentially changing a [foreign government]-owned [industry] company's political status. *See* 28 C.F.R. § 5.304(b).

<sup>14</sup> 22 U.S.C. § 613(d)(2).

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Finally, the March 14 Letter asks, in the alternative, that [US FIRM] be exempt from registration by means of the LDA exemption set out at 22 U.S.C. § 613(h). Pursuant to that exemption, an agent serving a foreign person or foreign entity would be exempt from registration if the agent “has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 [2 U.S.C. § 1601 et seq.] in connection with the agent’s representation of such person or entity.” *Id.* At the same time, the March 14 Letter clearly states that [US FIRM]’s representation “does not involve any lobbying or [US FIRM] reaching out to U.S. policymakers to obtain information for its client.”<sup>15</sup> Therefore, the LDA exemption is inapplicable.

### **III. Conclusion**

Accordingly, we find that [US FIRM] is obligated to register under FARA and to disclose its activities in accordance with FARA’s requirements. We ask that you effect [US FIRM]’s registration within 30 days of the date of this letter. 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, or by email at [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) if you have any questions.

Sincerely,

Brandon L. Van Grack  
Chief, FARA Unit

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<sup>15</sup> March 14 Letter at 2.