



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

November 1, 2019

By FedEx

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of June 6, 2019 (“June 6 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, [US firm], to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”).¹ Based upon your representations, we have concluded that [US firm] does not have an obligation to register under FARA.

In your June 6 Letter, you state that [US firm] is a consulting firm that was retained by [US subsidiary of foreign parent corporation (US sub)] to provide strategic assistance and guidance regarding current and potential business opportunities. You represent that [US sub] is a U.S. subsidiary of [foreign corporation], a company headquartered in [foreign country], and that neither company is government-owned. You further disclose that [US firm] delivers its strategic assistance and guidance through quarterly reports it prepares for [individual (chairman)], Chairman of [US sub] and all of its affiliated companies. In such reports, [US firm] informs and advises [chairman] and [US sub] about the domestic and foreign policies of the U.S., such as the United States’ relationship with [foreign countries], and the U.S. foreign and trade policy. You maintain that registration is not required because [US firm]’s activities are “designed to educate [foreign corporation] on U.S. laws and policies of commercial interest to these companies as well as on U.S. investment and financial opportunities for the ultimate purpose of maximizing their financial gain.”²

Generally speaking, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . 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,” and within the United States, in relevant part:

- (i) engages in political activities³ for or in the interests of such foreign principal;

¹ You provided additional information in an email dated July 18, 2019.

² June 6 Letter, page 4.

³ The Act defines “political activity” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country.” 22 U.S.C. § 611(o).

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(ii) acts as public relations counsel, publicity agent, information-service employee or political consultant⁴ for or in the interests of such foreign principal;

See 22 U.S.C. § 611(c)(1).

In your June 6 Letter, you assert that the proposed activity would not be considered “political activities,” or activities of a “political consultant.” After a careful review and consideration of your representations, we do not contest your conclusion.

Please note that our opinion is based solely upon the specific facts set out in your communications with our office, and must be revisited in the event that any of the facts change. In particular, your client may need to register under FARA if your client’s activities are undertaken with an intent to influence, in any way, a government official or agency or a segment of the public concerning the domestic or foreign policy of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party, including engaging in advocacy to U.S. government officials on behalf of, or for the benefit of, [US sub]. If any of the facts do change, you or your client should contact the FARA Unit immediately in order that we may reexamine whether your client has an obligation to register.

If you have any questions regarding this matter, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit

⁴ The Act defines a “political consultant,” as “any person who 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).