



**U.S. Department of Justice**

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 17, 2019

**By FedEx**

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of September 13, 2019 (“September 13 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your firm, [US firm], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”) for its public relations and communications activities on behalf of [international organization]. Based upon the representations in your letter, we do not contest your assertion that [US firm] could qualify for the exemption under Section 613(h) of the Act.

According to the September 13 Letter, the [international organization] is a privately funded, not-for-profit international organization headquartered in [foreign country]. The [international organization] is governed by a President and Executive Board, who are elected by members of the [international organization] from different countries. You note [text deleted]. You further quote “[text deleted].”

You represent that the [US firm] is a public policy advisory group based in [US city]. The Statement of Work for the engagement provides that the [US firm], through [US law firm], will undertake “gathering information and analyzing the most relevant political intelligence” and identifying “key influencers and decision makers” on identified topics such as “[text deleted].” Such key influencers include, “Members of Congress, the Administration, Presidential candidates, thought leaders, think tanks and the media.”

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 pertinent part:

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- (i) engages in political activities<sup>1</sup> for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant<sup>2</sup> for or in the interests of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

*See* 22 U.S.C. § 611(c)(1).

The [international organization] constitutes a foreign principal because it is “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). As described above, the [US firm]’s activities on behalf of the [international organization] are specified activities under Section 611(c) that would require registration under FARA, absent an exemption.

You assert that the [US firm] qualifies for the exemption under Section 613(h) of FARA, which exempts from registration any agent who “has engaged in lobbying activities and who 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.” FARA’s implementing regulations further provide that “in no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.” 22 C.F.R. §5.307. You maintain that given the organization, structure and governance of the [international organization], there is no specific foreign government that is a principal beneficiary of the [US firm]’s aforementioned activities.

Based upon the representations in your letter, we do not contest that the [US firm] would be eligible for the exemption pursuant to Section 613(h) of FARA, in connection with its representation of the [international organization].

Please note that this opinion is based solely upon the representations made in your September 13 Letter, and must be revisited in the event that any of the facts change. Your firm may need to register under FARA should the direction and focus of its activities change, in particular if they principally benefit a foreign government or foreign political party. If that were

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<sup>1</sup> 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).

<sup>2</sup> 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).

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to occur, your firm should contact the FARA Unit immediately so that we can reexamine whether its registration obligation has changed.

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