



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 21, 2020

By United States Postal Service and E-mail

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your email of December 2, 2019 (“December 2 Email”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of [US company] to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based on the representations set forth in your communications, we have concluded that [US company] has an obligation to register under FARA if it engages in certain activities.

Your December 2 Email states that [US company], an energy consulting group with an international focus, may be retained by (1) [foreign chamber of commerce] and (2) [foreign government office].¹ With respect to the [foreign chamber of commerce] representation, the December 2 Email relates that [US company] is considering organizing a delegation of [foreign chamber of commerce] members to meet with Washington D.C.-based business and energy organizations. This delegation would likely travel to the United States in [date deleted] and meet with the following organizations: [list of US based companies]. Additionally, your email of January 9, 2020 (“January 9 Email”) states that following a review of literature provided by [foreign chamber of commerce], its membership consists of private companies. With respect to the [foreign government office] representation, the December 2 Email relates that, following a meeting with the CEO of [foreign government office], you contacted several potential investment services companies to inform them about [foreign country], [foreign country]’s oil and natural resources, and [foreign country]’s potential need for investment advisory services. The December 2 Email further discloses that you suggested a firm that supplies materials to build roads contact [foreign government office] for a possible business partnership.

As an initial matter, 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,

¹ We understand the [foreign government office] to operate under the purview of [foreign country]’s Ministry of Business. [source deleted].

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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:

- (i) engages in political activities² for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant³ for or in the interests of such foreign principal;
- (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest 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 § 611(c)(1).

First, we consider whether [US company]’s proposed activities on behalf of [foreign chamber of commerce] would require registration under FARA. The Act defines the term “foreign principal” to include “a partnership, association, corporation, organization . . . organized under the laws of or having its principal place of business in a foreign country.” § 611(b)(3). [Foreign chamber of commerce], as a membership organization based in [foreign city], established for “promotion and protection of trade and investment,”⁴ is a foreign principal under the Act. If [US company] engages in activities on behalf of [foreign chamber of commerce] or their foreign members, [US company] would be acting “at the order, request, or under the direction or control, of a foreign principal.” § 611(c)(1). Arranging the proposed travel and meetings for [foreign chamber of commerce] members would not be considered “political activities,”⁵ as long as they are not intended to influence any U.S. Government official or the public regarding the domestic or foreign policies of the United States or the political or public interests of a government of a foreign country. Accordingly, [US company] is not required to register under FARA for its proposed activities for [foreign chamber of commerce].

Next, we consider whether [US company]’s proposed activities on behalf of [foreign

² 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.” § 611(o).

³ 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.” § 611(p).

⁴ [source deleted].

⁵ 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 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 or a foreign political party. § 611(o).

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government office] would require registration under FARA. As noted above, [foreign government office] is a “semi-autonomous body and comes under the direct purview of the Ministry of Business” in [foreign country].⁶ [Foreign government office] is part of a government of a foreign country, and considered a foreign principal under FARA.⁷ [US company]’s activities, as described in the December 2 Email, are “political activities” because they are intended to stimulate investment in [foreign country] by U.S. businesses and thus, are intended to influence a 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.” § 611(o). Accordingly, should [US company] undertake these activities, it would be required to register under FARA for these activities.⁸

Please note that our determination is based solely upon the specific facts set out in your December 2 Email and January 9 Email, and must be revisited in the event that any of the facts change. If any of the facts do change, you should contact the FARA Unit immediately in order that we may reexamine [US company]’s registration obligations in light of the new facts.

If [US company] chooses to engage in the above-described activities on behalf of [foreign government office], it should effectuate a registration within ten (10) days of such agreement or prior to any activity. 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

⁶ [source deleted].

⁷ § 611(b)(1).

⁸ We have considered the question of whether [US company] would qualify for the exemption set out at Section 613(d) of the Act and determined that the exemption does not apply in this case because [US company] is acting on behalf of a foreign government foreign principal. § 613(d).