



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 31, 2020

By E-mail

[Addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of July 8, 2020 (“July 8 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligations of your firm [law firm] and your potential client, a proposed U.S. subsidiary of [privately-owned foreign investment company of media assets], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in regard to your potential client’s activities in the United States. In response to our requests for additional information, you transmitted another letter on August 12, 2020 (“August 12 Letter”) and an email message on September 29, 2020 (“September 29, Email”). Based on the representations in your communications, we have determined that your law firm is not obligated to register under FARA. However, with respect to the registration obligations of your potential client, we decline to provide our present enforcement intentions at this time.

According to the July 8 Letter, your [deleted] [law firm], is [deleted] registered in [one of the United States] that specializes in federal government relations, lobbying, campaign finance compliance matters, and strategic communications. [Privately-owned foreign investment company of media assets] is a privately-owned investment company in [a foreign country] that is building an international portfolio of media assets. The [privately-owned foreign investment company of media assets] intends to create a subsidiary in the United States organized under the laws of [a U.S. state] (“U.S. Subsidiary”) that would include U.S. citizens as its incorporator, full-time Editor-in-Chief, and General Manager, and would be staffed by employees hired in the United States. Your letters further state that the U.S. Subsidiary will publish and operate a U.S.-hosted, English-language news website that will focus on U.S. and international news and compete in the U.S. media market. According to the July 8 Letter, the U.S. Subsidiary will be funded through online advertising sales and the [privately-owned foreign investment company of media assets]’s private and commercial funds. After the U.S. Subsidiary is established, it intends to enter into a contractual relationship with [your law firm] “to manage its US corporate/legal affairs as well as its Washington compliance matters.”

Your correspondence states that the [privately-owned foreign investment company of media assets] is a single-shareholder privately-owned investment company, and that no government or political party has an ownership stake in [it]. However, it took multiple inquiries from our office before you disclosed, in the September 29 Email, that the [privately-owned foreign investment company of media assets]’s sole shareholder is [name deleted], the Deputy Prime Minister of [a foreign country]. According to public records, [name deleted] has served in

[Addressee deleted]

October 31, 2020

Page 2

that role since [date deleted],¹ and has served as the Minister of [foreign government agency] since [date deleted].² [Sentence deleted].³

FARA seeks “to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political.”⁴ 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 activities⁵ for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant⁶ for or in the interests of such foreign principal.

See 22 U.S.C. § 611(c)(1).

According to the July 8 and August 12 Letters, once established, the U.S. Subsidiary intends to enter into a contractual relationship with your [law firm] “to manage its US corporate/legal affairs as well as its Washington compliance matters.” You inquire whether your firm would be obligated to register for engaging in the above-described activities on behalf of the [privately-owned foreign investment company of media assets]. The [privately-owned foreign investment company of media assets] is a foreign principal under Act, *see* 22 U.S.C. § 611(b)(1), and your firm would be acting under its direction and control. However, your firm would not be obligated to register under FARA, so long as its activities remain limited to the corporate and compliance matters described above, and the firm does not engage in the activities enumerated in 22 U.S.C. § 611(c)(1). *See also* 22 U.S.C. § 613(g).

¹ About [deleted]

² About [deleted]

³ [Article in newspaper]

⁴ H.Rep 89-1470, at 2 (1966).

⁵ 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).

⁶ 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).

[Addressee deleted]

October 31, 2020

Page 3

With respect to the U.S. Subsidiary, the FARA Unit, in its discretion, declines to state its present enforcement intentions at this time. *See* 28 C.F.R. § 5.2(h). In the July 8 Letter, you claim that the [privately-owned foreign investment company of media assets] will relinquish all editorial decision-making to the U.S. Subsidiary and that the [privately-owned foreign investment company of media assets] does not have an interest “in influencing U.S. government officials, or sections of the public within the United States, with reference to the political or public interest, policies or relations of a foreign government for [sic] foreign political party.” While such representations are relevant to a determination as to whether the U.S. Subsidiary has a registration obligation, they are not dispositive.⁷ And because the U.S. Subsidiary is not yet operational, we are unable to review objective evidence of such editorial independence. Additionally, the fact that a long-serving, senior government official is the sole owner of the U.S. Subsidiary raises questions about whether the U.S. Subsidiary will, at a minimum, be under the control of a foreign government. Those concerns have only been heightened by your reluctance to disclose the central role of that government official in the enterprise.

Accordingly, based on the representations in your communications, we have determined that your [law firm] is not obligated to register under FARA. However, we decline to provide our present enforcement intentions with respect to the registration obligations of the U.S. Subsidiary.

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

Sincerely,

/s/ Brandon L. Van Grack

Brandon L. Van Grack
Chief, FARA Unit

⁷ The Act defines “publicity agent” as “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 . . . broadcasts, motion pictures or otherwise.” *See* 22 U.S.C. § 611(h). The Act further defines “information-service employee” as “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts or conditions of any country other than the United States or of any government of a foreign country.” *See* 22 U.S.C. § 611(i).