



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 10, 2021

Via E-mail

[Addressee deleted]

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

Dear [name redacted]:

This is in reference to your letter of January 20, 2021 (“the January 20 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of you and your organization, [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 our review of your request, we have determined that you and [the Company] are obligated to register under FARA for the proposed activities to be undertaken on behalf of the [foreign government] as described in your submission.

In the January 20 Letter, you informed us that the [Company] is a Delaware limited liability company and a sole proprietorship that you founded in 2015. You further informed us that, in August 2018, you received approval from the Department of State, through the Office of [Military department] Personnel, under the provision of Title 37, United States Code §908, and pursuant to Title 22, Code of Federal Regulations, § 3a5, to receive payment from the Ministry of Defense of the [foreign government] (“MOD”) for work as a consultant to advise the MOD and to develop the capacity and capabilities of the [foreign country’s] armed forces.¹ You advised us that on October 15, 2020, you and your [Company] entered into a letter of engagement with the Defense Attaché Office of the Embassy of the [foreign government] to “provide support and guidance to the MOD on matters related to national security, specifically [military] security and [military] capabilities.” You also disclosed that you traveled to [the foreign country] from January 1, 2021, to January 8, 2021, during which time you met with a number of MOD entities, including the [foreign country’s] Head of [Military] (“HOM”). You informed us that, during these meetings, you and the HON discussed construction of a new [foreign country] military [base], and you provided an assessment of the attributes that make a [base] suitable for military use. HOM then requested that you engage directly with the U.S. [military] to determine the U.S. [military’s] preferences for use of this [base] and the U.S. [military’s] input concerning HOM’s development plans so that the physical structure

¹ Title 37 U.S.C. § 908 authorizes retired members of the armed forces to receive civil employment and payment therefor from a foreign government with the approval of the Secretary of the military department [redacted] as well as the Secretary of State. Title 22, C.F.R. § 3a5 provides that the basis for the decision by the Department of State is whether the applicant’s proposed employment with a foreign government would adversely affect the foreign relations of the United States, in light of the applicant’s official status as a retiree.

is optimized for use by the U.S. [military] as well as other allied [militaries]. You also met with several military educational organizations in the [foreign country] that expressed a willingness and desire that the organizations be used by the U.S. military. You inquired whether facilitating training and exercises between the U.S. military and the MOD would trigger a registration requirement.

Generally speaking, save certain exemptions, a party is an “agent of a foreign principal” that 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: who directly or through any other person,” and within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) 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 22 U.S.C. § 611(c)(1).

The Government of the [foreign country], through its agencies the MOD and HOM, is a “foreign principal” as defined by the Act, 22 U.S.C. § 611(b)(1). If you and the [Company] act pursuant to the letter of engagement with MOD on behalf of the Government of the [foreign country], you would clearly be acting “at the order, request, or under the direction or control, of a foreign principal,” 22 U.S.C. § 611(c)(1).² You expressed concern that your engagement with the U.S. [military] concerning the [base] on behalf of the MOD may trigger an obligation for you and the [Company] to register under FARA because it would be considered that you are representing the interests of the [foreign government] before an agency or official of the Government of the United States. You stated that, by undertaking these activities on behalf of MOD and [the foreign government], you and the [Company] do “not intend to influence a U.S. government official or agency or the U.S. public regarding the domestic or foreign policy of the U.S. or with respect to the political or public interest, policies or relations of the [foreign government].”³

² FARA’s implementing regulations, at 28 C.F.R. § 5.100(b), provides that “the term *control* or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or activities of a person, whether through the ownership of voting rights, by contract, or otherwise.” (emphasis added).

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

We have determined that you and the [Company] would be acting as an agent of the foreign principal, the [foreign government], in representing the interests of the MOD, which seeks to complete construction of the [base] in furtherance of the [foreign country's] national security, foreign relations, and defense interests, by seeking the input of the U.S. [military], an agency of the U.S. government. *See*, 22 U.S.C. §611(c)(1)(iv). In addition, contrary to your statement, we have determined that you and the [Company] also would be engaging in political activities because you would be intending to influence an agency of the U.S. Government with reference to formulating or changing the foreign policy of the United States as concerns the [foreign government], as well as with respect to the political or public interests, policies or relations of the [foreign government]. *See*, 22 U.S.C. §611(c)(1)(i), and (o). We have reached this conclusion because the intended effect of your activities, as you have expressed them, would be to reaffirm, if not strengthen, the foreign relations and military cooperation between the United States and the [foreign government] by engaging with the U.S. [military] on behalf of the MOD. Specifically, you and the [Company] would be seeking to influence the U.S. [military] to use this new [base] by seeking “the U.S. [military's] input into the development plans, so that the physical infrastructure of the [base] is optimized for use by the U.S. [military], as well as other allied [militaries].” Further, “engagement by the [Company] to facilitate training or exercises between the U.S. military and the MOD” would also trigger a FARA registration obligation, as such activity would constitute political activity under the Act. *See*, 22 U.S.C. §611(c)(1)(o). The regulations implementing FARA provide that the terms “formulating, adopting, or changing,” as used in the definition of “political activities” outlined in the Act, include “any activity which seeks to maintain any existing domestic or foreign policy of the United States.” 28 C.F.R. § 5.100(e). You have not requested, nor do we see that you qualify for, any exemptions, and thus you and the [Company] must register under FARA for the proposed activities to be undertaken on behalf of the [foreign government] as described in your submission

Please effectuate the registration of the [Company] and yourself within the next thirty (30) days. If you have any questions regarding this matter, please contact [name redacted] by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer Kennedy Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit