



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 29, 2021

Via Email to []

[addressee deleted]

Re: [U.S. public relations agency] (Registration No. [number])
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name]:

We write in response to your letter of February 24, 2021 (“February 24 Letter”), requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to the obligation of your client, [U.S. public relations agency] to maintain its registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with [U.S. public relations agency]’s activities on behalf of [foreign corporation].

Your letter seeks exemption from FARA’s registration obligations pursuant to the commercial exemption outlined in Section 613(d)(2) of the Act (“commercial exemption”). Based on your representations, we have determined that [U.S. public relations agency] is not entitled to an exemption and is obligated to maintain its registration.

I. Background

With respect to its engagement with [foreign corporation], [U.S. public relations agency] registered with the U.S. Department of Justice (“DOJ”) under FARA on [date], naming [foreign corporation’s U.S. subsidiary] as its foreign principal.¹

The February 24 Letter states that [foreign corporation’s U.S. subsidiary] is a U.S. subsidiary of [foreign corporation] which is based in [foreign country]. February 24 Letter at 1. As you note, [foreign corporation]’s website describes the company as “a leading provider of [products and services listed].” *Id.* (citing [foreign corporation’s website]).

On Exhibit B to its Registration Statement, [U.S. public relations agency] stated that it would “[a]dvise [foreign corporation] on [text redacted].”

¹ You indicate in the February 24 Letter that “[i]n its registration, [U.S. public relations agency] identified [foreign corporation’s U.S. subsidiary] as its foreign principal, rather than the company’s [foreign country] parent, because at the time [U.S. public relations agency]’s principal point of contact was the head of [foreign corporation in North America] [head’s name].” February 24 Letter at 1, n.2. You further state that “[head’s name] is now Vice President of Global Affairs for [foreign corporation], based in [another foreign country].” *Id.* A copy of [U.S. public relations agency]’s engagement letter with [foreign corporation’s U.S. subsidiary] dated [date], for services continuing through [date], was provided to the FARA Unit.

According to the February 24 Letter, [U.S. public relations agency]’s services for [foreign corporation’s U.S. subsidiary] include public relations work focused on responding to two “adverse” U.S. government actions and their impact on [foreign corporation]. First, you identified the prohibition, pursuant to [text deleted], H.R. [text deleted], on certain U.S. government Agencies from, as you explain, “buying, or contracting to buy, [text deleted] produced by several [foreign country] companies, including [foreign corporation].” February 24 Letter at 2. Second, you identified the addition of [foreign corporation] to the [text deleted], resulting in, as you note, “the imposition of a licensing requirement for [text deleted].

You posit that these services, among others, qualify for the exemption set forth in Section 613(d)(2) of the Act for certain commercial activities. You assert that “[U.S. public relations agency] has been focused on protecting and advancing [foreign corporation]’s *commercial* interests, *not* any interests of the [foreign country] Government or the [foreign political party].” February Letter at 2 (emphasis in original).

We disagree.

II. FARA Analysis

FARA requires the registration of “agents of foreign principals” engaged within the United States in certain specified activities. 22 U.S.C. § 611(c). Among the activities triggering registration are engaging in political activities³ and acting within the United States “as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of . . . [a] foreign principal.” §§ 611(c)(1)(i) and (ii). An agent is acting as a political consultant if it “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). An agent is acting as a publicity agent if it “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

² [U.S. public relations agency] is helping [foreign corporation] address these matters by, among other things, “respond[ing] to media inquiries about [U.S. government] actions [adverse to [foreign corporation]] and [prepar[ing] statements and factsheets about the company’s [policies] and steps the company has taken, or is taking, to address [concerns.]” February 24 Letter at 6.

³ The Act defines “political activities” 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 . . . the political or public interests, policies, or relations of a government of a foreign country or foreign political party.” 22 U.S.C. § 611(o).

means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” § 611(h). Under these definitions, [U.S. public relations agency] is acting as a political consultant and a publicity agent.

As a preliminary matter, [U.S. public relations agency] has an agency relationship with [foreign corporation]. Under FARA, [foreign corporation] is a foreign principal.⁴ Because [U.S. public relations agency] has a direct contractual relationship with [foreign corporation’s U.S. subsidiary] and, under the definitions set out above, is performing political consulting and public relations services for the benefit of [foreign corporation], [U.S. public relations agency] is an agent of said foreign principal.⁵

Even if agency under FARA is established, a foreign agent may qualify for one of the exemptions set out in 22 U.S.C. § 613. You submit that [U.S. public relations agency] is entitled to the commercial exemption pursuant to § 613(d)(2). Under FARA’s implementing regulations, “[t]he burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300.

Under Section 613(d) of FARA, an agent of a foreign principal may be exempt from FARA’s registration requirements if it engages “*only* (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal; or (2) in other activities not serving predominantly a foreign interest.” 22 U.S.C. § 613(d) (emphasis added). With respect to the commercial exemption, FARA’s implementing regulations provide the following:

⁴ The term “foreign principal” includes “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). Thus, the issue is not [foreign corporation’s U.S. subsidiary]’s status, but rather that of [foreign corporation], which 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,” to wit: the [foreign government]. [Foreign corporation] itself is owned in part by [foreign country] state-owned companies, and whose interests are closely intertwined with the [foreign government and political party].

⁵ A person or entity is an “agent of a foreign principal” if the person or entity acts “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, in whole or in major part by a foreign principal, . . .” 22 U.S.C. § 611(c)(1). Although the relationship between [U.S. public relations agency] and [foreign corporation] is indirect, [U.S. public relations agency] is nevertheless an agent of [foreign corporation].

Citing [foreign corporation]’s status as a publicly traded company, and the percentage of its shares owned by [foreign country] state-owned companies, you contend that [foreign corporation] is an independent private commercial entity not subject to the direction or control of the [foreign government or political party]. February 24 Letter at 4.

Yet you do not dispute that the [foreign country] has financial stakes, through state-owned enterprises, in [foreign corporation]. As you stated in the February 24 letter, on Exhibit A to [U.S. public relations agency]’s Registration Statement, [U.S. public relations agency] represented that [foreign corporation] is, in fact, “financed by a foreign government, foreign political party, or other foreign principal.” February 24 Letter at 5. You noted that [U.S. public relations agency] explained in the exhibit [text deleted] in the affirmative, namely that its [year] state-owned enterprise seed investment constituting a [percent] ownership stake has since decreased to [percent]. *Id.* at 5-6. You further note that [foreign corporation]’s [Report] found that “[percent] of [foreign corporation]’s shares are owned by [foreign country] state-owned companies.” *Id.* at 6.

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[A] person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or political party and the political activities do not directly promote the public or political interests of a foreign government or foreign political party.

28 C.F.R. § 5.304(c).

We find that [U.S. public relations agency] has not met its burden under Section 613(d)(2) of the Act.

You contend that [U.S. public relations agency]'s activities for [foreign corporation] are independent from the [foreign government and political party]. You assert, among other things, that [U.S. public relations agency] (1) has not had contact with the [foreign government or political party] in connection with these activities; (2) has no knowledge that the [foreign government or political party] has played any role in [U.S. public relations agency]'s activities; (3) has not devised content on behalf of [foreign corporation] or [foreign corporation's U.S. subsidiary] to "promote the public or political interests" of the [foreign government or political party]; and (4) has no knowledge that its public relations work on behalf of [foreign corporation] or [foreign corporation's U.S. subsidiary] has directly promoted the public or political interests of the [foreign government or political party]. February 24 Letter at 3.

As an initial matter, it is not clear that [U.S. public relations agency]'s political consulting and public relations activities are being undertaken in direct furtherance of the bona fide commercial, industrial, or financial operations of its foreign principal. It is plain, however, that [U.S. public relations agency]'s activities challenging U.S. government prohibitions on the basis of stated national security and human rights concerns, described below, are political and seek to promote the public and political interests of the [foreign government and political party]. 28 C.F.R. § 5.304(c).

It is evident that several of [U.S. public relations agency]'s services for [foreign corporation] are not "other activities not serving predominantly a foreign interest" within the meaning of Section 613(d)(2) of the Act. [U.S. public relations agency]'s activities undertaken in light of prohibitions implemented against [foreign corporation] through the [text deleted] and the [text deleted], are not only in furtherance of [foreign corporation]'s bona fide trade or commercial interests, but also are in furtherance of assessing, responding to, and potentially changing American national security policies affecting the [foreign government and political party].

[U.S. public relations agency]'s consulting services regarding U.S. government prohibitions and licensing restrictions on [foreign corporation] not only serve the public and political interests of the [foreign government and political party], they are, themselves, "political

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activities,” requiring registration.⁶ [Foreign corporation]’s [products and services] were included in the [text deleted]’s prohibition “[f]or [text deleted] . Additionally, [foreign corporation]’s placement on the [text deleted] represents the U.S. Department of [Agency]’s view that the company is “reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.”⁷ As you noted, [foreign corporation] and other companies were added to the [text deleted] for the stated grounds that “[these companies] have been implicated in human rights violations and abuses in the implementation of [foreign country]’s campaign of repression, mass arbitrary detention, and high technology surveillance against [religious and ethnic groups] in the [region of foreign country].” February 24 Letter at 2 (quoting [Fed Reg] [date])).⁸ Such prohibitions and licensing restrictions are inherently political, as these decisions were expressly made to serve American national security policies and interests vis-à-vis the [foreign government and political party]. [U.S. public relations agency]’s efforts to challenge these decisions promote the [foreign government’s and political party’s] public and political interests.

Further evidence of [foreign corporation]’s ties to the [foreign government and political party] is the U.S. Department of Defense’s (“DOD”) [date] decision, pursuant to the [text deleted], to include [foreign corporation] on a list of “[foreign political party and country] [text deleted]” operating directly or indirectly in the United States. [U.S. public relations agency] assisted [foreign corporation] in publicly opposing this decision. February 24 Letter at 6. As part of your argument that the commercial exemption applies, you state that “[U.S. public relations agency] is aware of only [this] one instance where the U.S. Government has suggested that [foreign corporation] has a relationship with the [foreign] Government.” February 24 Letter at 6. This “one instance,” among the others described herein, demonstrates [foreign corporation]’s ties to the [foreign government and political party]. It also shows [U.S. public relations agency]’s efforts for [foreign corporation] on this matter also directly promote the public and political interests of the [foreign government and political party].⁹

⁶ 22 U.S.C. § 611(o).

⁷ [text deleted].

⁸ [Foreign corporation]’s implication in “[Foreign country]’s campaign of repression, mass arbitrary detention, and high technology surveillance,” which prompted the U.S. Department of [agency] to add it to the [text delted], further demonstrates that it does not operate independently from the [foreign government or political party]. *See* 28 C.F.R. § 5.304(c) (allowing the commercial exemption when, among other circumstances, the political activities “are not directed by a foreign government or foreign political party.”).

⁹ [text deleted]

Because [U.S. public relations agency] is providing advice about how to respond to American policy to the benefit of [foreign corporation], a company closely linked to the [foreign government and political party], its activities amount to “directly promoting the political interests of a foreign government or foreign political party,” by seeking to lessen the negative impact of measures undertaken by the United States government to counter human rights abuses and damage to U.S. national security attributable to the conduct of the [foreign] government. 28 C.F.R. § 5.304(c).

In sum, [U.S. public relations agency]’s activities are neither private, nor nonpolitical. They are not “other activities not serving predominantly a foreign interest” under Section 613(d)(2) of the Act because they serve the public and political interests of the [foreign government and political party]. *See* 28 C.F.R. § 5.304(c). Thus, the commercial exemption does not apply.

III. Conclusion

[U.S. public relations agency] is obligated to maintain its registration under FARA and to disclose its activities in accordance with FARA’s requirements. Because it is acting, through [foreign corporation’s U.S. subsidiary], as an agent of [foreign corporation], a foreign principal under the Act, please amend the [U.S. public relations agency] registration to reflect that agency relationship. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [name] by telephone at 202-233-0776, or by email at FARA.Public@usdoj.gov if you have any questions.

Sincerely,

Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit