



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 19, 2021

Via E-mail

[Name and address deleted]

Re: [Name deleted]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Name deleted]:

We write in response to your letter of April 10, 2021 (April 10 Letter), received in this office May 25, 2021, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of [Company], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Included in your submission was a description of two scenarios in which [Company] was providing consulting services to foreign principals. One of the scenarios, involving services to be provided to the [Foreign government] is already ongoing. The other scenario, involving services to be provided to the [Foreign government] and/or the [Foreign government], would commence after an agreement is reached with their representatives. Based on the representations made in your submission, our opinion is that [Company] is not acting as an “agent of a foreign principal,” pursuant to Section 611(c) of the Act, in connection with the services you are currently providing to [Foreign government], but would be acting as an “agent of a foreign principal,” with respect to the proposed activities you would be performing for [Foreign government] and [Foreign government].

I. Background

According to your submission, on January 2, 2021, [Company] entered into a contract at the request of the President of [Foreign country] to provide advisory services to the [Foreign government agency].¹ Your description of the terms of the contract² describe a Scope of Work that includes: (1) advisory services to support [Foreign country’s] efforts to improve its competitiveness to attract international business and investment; (2) research and data analysis of [Foreign country’s] performance on international indicators that measure a country’s

¹ The [Foreign government agency] is an agency of the [Foreign government], attached to the [Executive office of foreign government]. [Foreign government agency], [Website name], [URL]. [Foreign government agency’s] mission is to promote business investment in [Foreign country].

² We note that you provided a copy of the contract in [Foreign] language as it is in accordance with [Foreign country] law which you purport requires such contracts to be in [Foreign] language. While we have not obtained a word-for-word translation of the contract, your description of its terms appears to be consistent with those detailed in the contract.

governance, business conditions, and financial factors; (3) providing guidance and recommendations to the [Foreign country leader] and the [Foreign government agency's director] regarding policy reforms that will increase [Foreign country's] competitiveness; and, (4) advising on a communications strategy to inform international businesses and investors regarding advances made by [Foreign country] to improve its business environment. You have further informed us that your work is performed remotely by e-mail, texts, telephone, and frequent in-person visits to [Foreign country]. You have affirmatively stated that for this contract with [Foreign country], [Company] is not advising as to U.S. Government programs or representing the foreign principal before U.S. Government officials or agencies.

With respect to the second scenario you describe in your letter, [Company] is in discussions with the Governments of [Foreign country] and [Foreign country], separately, and expects to enter into contracts to provide advisory services to those governments. The Scope of Work for each government would likely include: (1) providing advisory services to help each government improve its performance on 20 international indicators used by the Millennium Challenge Corporation (MCC), a U.S. Government foreign aid agency, to enhance chances for securing economic development grants; (2) conducting research and data analysis on each country's performance on the 20 international indicators; (3) providing guidance and recommendations regarding policy reforms that will increase each country's performance on the 20 international indicators; (4) advising on communications strategy to the independent rating agencies regarding advances made; (5) advising on an engagement strategy to the U.S. Government (MCC, Department of State, United States Congress) regarding advances made by each government on its qualification criteria for the MCC program;³ and, (6) communicating with U.S. Government officials to clarify a process or policy on behalf of the foreign government, or to exchange information regarding the foreign principal with local U.S. Ambassador in country as courtesy to the Embassy. You clarify in your letter that [Company] does not anticipate that it will participate when foreign principals meet with U.S. officials. [Company] would be working remotely via e-mails, texts, and telephone from the U.S., as well as frequent visits to each country.

II. FARA Analysis

As a preliminary 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 and within the United States, "engages in political activities" or "acts . . . as a political consultant . . . for or in the interests of such foreign principal." 22 U.S.C. § 611(c)(1)(i) and (ii).

The definition of "foreign principal" contained in FARA includes "a government of a foreign country and a foreign political party." 22 U.S.C. § 611(b)(1). Under this definition, the

³ We take note of your assertion that you will not agree to represent the foreign countries or lobby the U.S. Government on their behalf, but will, rather, advise each foreign principal on its own engagement strategy with the U.S. Government.

[Foreign government] (and [name] as an agency of that government⁴), the [Foreign government], and the [Foreign government] are all foreign principals under the Act.

Thus, the inquiry to be made under FARA is a two-part inquiry: (1) the nature of the relationship between the agent and a foreign principal; and, (2) whether the agent has engaged within the United States in one of the enumerated activities in the Act for or in the interests of such foreign principal. *Id.* In this case, [Company] has a contractual relationship with [Foreign government] and proposes to enter into future contracts with [Foreign government] and [Foreign government].⁵ If both elements of the inquiry are satisfied, then an obligation to register may exist.

Under FARA, “[T]he term ‘political consultant’ means 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 foreign political party.” 22 U.S.C. § 611(p). Recognizing the seemingly wide breadth of the statutory definition to include the mere provision of advice or information to a foreign principal about political or policy matters, we follow Congress’s intent as reflected in the legislative history to the 1966 FARA Amendments: “a ‘political consultant’ would not be required to register as an agent unless he engaged in political activities, as defined,⁶ for his foreign principal.” H.R. Rep. No. 89-1470 at 7; S. Rep. No. 89-143 at 9.

Thus, the two scenarios of activity described in the April 10 Letter each demand a different result. With respect to the ongoing activity in which [Company] is engaged on behalf of [Foreign government agency], an agency of the [Foreign government], and a foreign principal under FARA,⁷ it appears that [Company], under the terms of the contract, is not obligated to register because it is not engaged in political activities, or any other registrable activity, within the United States on behalf of the [Foreign government], nor does the contract anticipate that [Company] will advise on U.S. Government programs or represent the foreign principal before U.S. Government officials or agencies. Rather, the services that [Company] has been providing appear to be more international in scope, focusing on advisory services in support of improving

⁴ The definition of the term “government of a foreign country” includes agencies of such government. 22 U.S.C. § 611(e).

⁵ Under FARA’s implementing regulations, the term “control” includes “the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether . . . by contract or otherwise.” 28 C.F.R. § 5.100(b).

⁶ “Political activities” is defined under FARA 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 or a foreign political party.” 22 U.S.C. § 611(o).

⁷ See fn. 4 and accompanying text.

[Foreign country's] competitiveness to attract international business and investment and measuring its performance against international indicators.⁸

The second scenario described in your April 10 Letter, however, leads us to the opposite opinion. In the proposed Scope of Work⁹ for [Foreign government] and/or [Foreign government], both foreign principals under FARA,¹⁰ [Company] would be working with its foreign principals to advise on engagement strategies for each of the foreign principals to interact with the U.S. Government on specific issues to advance the political and public interests of each foreign principal. [Company] represents that, under the proposed contracts, it would not, itself, represent the foreign principals or lobby directly U.S. Government officials or accompany the foreign principals in their interactions. Nonetheless, advising the foreign principals on their engagement strategies with the U.S. Government is "political activity" under FARA. This is because [Company] intends to provide advice on strategy for the foreign principals' engagement with the U.S. Government, with the intent of enhancing the foreign principals' efforts to influence the U.S. Government "with reference to the political or public interests, policies, or relations" of [Foreign country] and/or [Foreign country]. 22 U.S.C. § 611(o). Further, such engagement also falls within the definition of "political consultant," consistent with Congress's intent, to include a threshold finding that the agent was engaging in political activities.¹¹ *Id.*

III. Conclusion

We, therefore, ask that you effect [Company] registration within 10 days of reaching an agreement with either the [Foreign government] or the [Foreign government]. You need not take any action with respect to your described activities on behalf of the [Foreign government]. Our opinion is based solely on the facts as they have been presented and any change could alter our opinion. Please keep us informed if [Company's] activities or terms of contract for the matters under consideration if they change in any way, as our opinion may change.

Useful information and forms may be found on our website at <http://www.fara.gov>.

⁸ April 10 Letter at 1-2 and attached contract.

⁹ You have not provided a draft Scope of Work or other documentation of your proposed work for [Foreign country] and/or [Foreign country]. We are relying on the representations made in the April 10 Letter.

¹⁰ 22 U.S.C. § 611(b)(1).

¹¹ Your April 10 Letter notes two instances in which [Company] might communicate directly with a U.S. Government official: (1) to raise a question regarding process or policy that requires clarification; and, (2) to exchange information regarding the foreign principal with the local U.S. Ambassador in country as a courtesy. These activities would not be considered "political activities" under the Act. *See* 28 C.F.R. § 5.100(e) ("The terms *formulating, adopting, or changing*, as used in section 1(o) of the act, . . . do not include making a routine inquiry of a U.S. Government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question.") (emphasis in original) Such contacts, while not necessitating registration by themselves, would nonetheless be reportable under FARA's disclosure requirements. 22 U.S.C. § 612(a)(6).

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We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [FARA attorney] by telephone at 202-233-0776, or by e-mail to FARA.Public@usdoj.gov, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit