



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 24, 2021

Via FedEx and E-mail

[Addressee]

[Address]

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

Dear [Addressee]:

This is in reference to your letter of 2021 (“April 30 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client [U.S. affiliated corporation] (hereinafter “U.S. corporation”), to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), for its proposed activities on behalf of [foreign parent corporation] (hereinafter “foreign corporation”), a commercial investment company headquartered in [foreign country]. Based on our review of your request, including the specific representations therein narrowing the scope of outreach activities, we do not contest your assertion that [U.S. corporation] is not obligated to register under FARA.

In the April 30 Letter, you state that [U.S. corporation] plans to engage in outreach to various private and public sector organizations in the United States to gather additional information and insights about two issues relevant to [foreign corporation]’s investments: (1) the regulation of alternative [Deleted] products (i.e., [Deleted] alternatives and [Deleted]) and (2) trends with respect to requirements and regulations regarding the classification of workers in the so-called “gig” or “sharing” economy. The sole purpose of the proposed activities will be to obtain information relevant to [foreign corporation]’s investment decisions. You represent that the outreach will not involve lobbying contacts with any government officials, attempts to influence a U.S. audience, or advocacy for [foreign corporation]’s interests or policy preferences.

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, in pertinent part:

- (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;

(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 April 30 Letter acknowledges that [foreign corporation] is a “foreign principal” as defined by the Act, 22 U.S.C. § 611(b)(1) and that [U.S. corporation] is undertaking activities in the United States “on behalf of [foreign corporation].”¹ That said, we do not contest your assertion that [U.S. corporation] is not acting as an “agent of a foreign principal” under FARA because the above-described activities do not constitute registrable activities as enumerated in Section § 611(c)(1)(i) through (iv) of the Act. If [U.S. corporation] were to engage with government officials and private sector executives in an effort to influence officials or public opinion, or change government policy or, these efforts would be considered “political activities” and would require registration.² In this regard, we rely upon your representations that [U.S. corporation] would be only soliciting information concerning two discreet commercial issues. We further rely upon your representation that [U.S. corporation]’s outreach will not involve lobbying or advocating for [foreign corporation]’s interests or policy preferences with either U.S. government officials or “any section of the public.” *See* 22 U.S.C. § 611(o). Accordingly, under the facts you have presented, [U.S. corporation]’s engagement would not constitute political activity and therefore would not require registration under FARA.

Please note that our opinion is based solely upon the facts set forth in your April 30 Letter and must be revisited in the event that any of the facts presented change. In particular, [U.S. corporation] may need to register under FARA if it undertakes certain activities on behalf of [foreign corporation] with an intent to influence, in any way, a U.S. Government official or agency or a segment of the public within the United States concerning the domestic or foreign policy of the United States or the political or public interest, policies, or relations of any foreign government. If any of the facts change, [U.S. corporation] should contact the FARA Unit immediately so that we may reexamine whether it has an obligation to register.

¹ A party acting “on behalf of” a foreign principal may be considered to be acting as its “representative” or “at the order, request, or under the direction or control” of a foreign principal. 22 U.S.C. § 611(c).

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.” 22 U.S.C. § 611(o).

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If you have any questions regarding this matter, please contact [FARA Unit] by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer Kennedy Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit