



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 18, 2021

Via E-mail

[name]

[address]

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

Dear [name]:

We write in response to your letter of July 23, 2021 (July 23 Letter), in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of your firm, [law firm], 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 copy of a proposed engagement agreement between the Firm and [foreign government] and a description of the services the Firm intends to provide to [foreign government] through [foreign government’s] consulate offices in [city]. Based on the representations made in your submission, we will not contest your assertion that the Firm is not acting as an “agent of a foreign principal,” pursuant to Section 611(c) of the Act, in connection with the described services you intend to provide to [foreign government].

I. Background

According to your submission, the Firm will be engaging with officials of [foreign government] to represent [foreign country] in connection with the negotiation and drafting of an amendment to (and extension of) its existing lease agreement for [foreign country’s] Consulate office located in [city]. You note that the counterparty landlord to the proposed lease agreement is a private party not affiliated with, owned by, or managed by the United States Government.

Your submission, through the proposed engagement agreement between the Firm and [foreign government], states that the Firm will not: (i) engage within the United States in political activities for or in the interests of [foreign country]; (ii) act within the United States as a public relations counsel publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicit, collect, disburse, or dispense contributions, loans, money, or other things of value for or in the interest of [foreign country]; or (iv) within the United States represent the interests of [foreign country] before any agency or official of the Government of the United States.

II. FARA Analysis

[name]
[address]
August 18, 2021
Page 2

Under FARA, 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 other acts specified in the statute. 22 U.S.C. § 611(c)(1)(i)-(iv).

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, [foreign country] is a foreign government and thus, a foreign principal 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.* If the Firm’s activities satisfy both elements of the inquiry, then an obligation to register may exist.

While the Firm’s intent to enter into a contract with [foreign country] appears to satisfy the first part of the inquiry,¹ its activities, based on the representations made in the July 23 Letter, do not appear to be the activities described in 22 U.S.C. 611(c)(1)(i-iv).² These are all activities which, when engaged in, are intended to influence the United States Government or a section of the American public with respect to the foreign or domestic policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party.³ In this case, the Firm is, instead, intending to enter into a contractual relationship with [foreign country] and intends to represent it with respect to specified legal activities with a private party, according to the Firm’s submission. Therefore, the Firm would not be an “agent of a foreign principal,” as defined in the Act. 22 U.S.C. § 611(c).

III. Conclusion

Therefore, based on the representations made in your July 27 Letter, we will not contest your assertion that the Firm is not an “agent of a foreign principal,” required to register under FARA. Please note that 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 the Firm’s activities or terms of contract for the matters under consideration change in any way, as our opinion may change.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact

¹ The term “control” or any of its variants includes the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person whether through the ownership of voting rights, by contract, or otherwise. 28 C.F.R. § 5.100(b).

² To be clear, mere recitation in a contract that a party will not engage in registrable activities is not dispositive of whether a party is obligated to register. It is the nature of the activities and relationship of the parties involved that are considered.

³ See 22 U.S.C. § 611(o) (definition of “political activities”).

[name]
[address]
August 18, 2021
Page 3

[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