



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 13, 2019

Via Email and USPS

[Lawyer]

[Address]

Re: [Client Firm], Inc.
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Lawyer]:

We write in response to your letter of September 6, 2019 (“September 6 Letter”), and attached contract, requesting an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of your client, [Client Firm], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations in your letter, we have concluded that [Client Firm] is obligated to register under the Act.

I. Relevant Facts

According to the September 6 Letter, [Client Firm], is a public affairs and consulting firm that has been performing work on behalf of [U.S. U.S. Operating Company], and its U.S. parent companies, [Holding Company 1], and [Holding Company 2](collectively, “the Companies”).¹ [Client Firm] will assist in fostering public debate, making public statements, and engaging with U.S. government officials and representatives for the purpose of reducing [Foreign Country] sanctions on the Companies and promoting the transition of control over [Foreign Company] and its assets from the [Sanctioned Government] to the [Recognized Government].

The September 6 Letter notes that the United States has recognized the government of [Foreign Leader 1] as the only legitimate Government of [Foreign Country] (“Legitimate Government”), and has derecognized the previous president, [Foreign Leader 2]. The September 6 Letter further states that [Foreign Company] and its parent companies recognize the [Foreign Leader 1’s] control of [Foreign Company] through the appointment of the [Foreign Company Ad Hoc Board]. The prior [Foreign Company] Board of Directors, appointed by the [Sanctioned] Government, continues to operate in [Foreign Country]. The United States enacted sanctions on the [Sanctioned] Government and its property, including [Foreign Country] and its subsidiaries. [U.S. Operating Company] and its parent companies rely on a series of general licenses issued by the Department of the Treasury to maintain current business operations.

¹ According to the September 6 Letter, [U.S. Operating Company] is wholly owned by [Holding Company 1], which is wholly owned by [Holding Company 2]. [Holding Company 2] is wholly owned by [Foreign Company], which is incorporated in [Foreign Country], and wholly owned by [Foreign Government].

The September 6 Letter notes that [Client Firm] has been registered under the Lobbying Disclosure Act for its work for the Companies since [Redacted] 2016. The September 6 Letter asks that [Client Firm] be exempt from registration under FARA pursuant to Section 3(d)(2) of the Act for “activities not serving predominantly a foreign interest,” and pursuant to the “LDA Exemption” set out at Section 3(h) of the Act. 22 U.S.C. § 613(d)(2) & (h).

II. Analysis

The purpose of FARA is to inform the American public of the activities of agents working for foreign principals intended to influence U.S. government officials or the American public with reference to the domestic or foreign 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. Under FARA, the term “foreign principal” includes “a government of a foreign country and a foreign political party . . . and 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). Further, the term “government of a foreign country” includes “any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States.” 22 U.S.C. § 611(e).

A party representing a foreign principal is “an agent of a foreign principal” who must register under FARA if it 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, or subsidized in whole or in major part by a foreign principal” and who directly or through another person engages in certain specified activities within the United States. Among those activities requiring registration are engaging in “political activities”² or “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.” 22 U.S.C. § 611(c)(1)(i), (iv).

In the scenario outlined in the September 6 Letter, [Foreign Company] and the [Foreign Government] are foreign principals under FARA. [Client Firm] has contracted with [U.S. Operating Company], which, through its U.S. parent companies, [Holding Company 1] and [Holding Company 2], has an agency relationship with [Foreign Company], a foreign principal. [Foreign Company], is owned by the Government of [Redacted], also a foreign principal. Since [Client Firm] will be engaging in political activities³ and working to support meetings with U.S. Government officials on behalf of its foreign principals, it must register under FARA, absent an exemption. *Id.*

Your September 6 Letter asserts that the “commercial” exemption under Section

² The term “political activities” means 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 relation of a government of a foreign country or a foreign political party. 22 U.S.C. § 611(o).

³ The September 4 Letter does not contest that [Client Firm] will be engaging in political activities.

613(d)(2) for activities “not serving predominantly a foreign interest” should apply because [Client Firm] will be engaging only in activities in furtherance of [U.S. Operating Company’s] commercial interests. 22 U.S.C. § 613(d)(2). We do not agree. As described in FARA’s implementing regulations, “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 . . . so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.” 28 C.F.R. §5.304(c) (emphasis added). Your September 6 Letter states that in addition to protecting [U.S. Operating Company]’s commercial interests, the proposed activities would directly promote the transition of control over [Foreign Company] from the [Sanctioned] Government to the [Legitimate] Government. Accordingly, [Client Firm] will be promoting the public and political interests of the [Legitimate] Government, and thus, the exemption set out at Section 613(d)(2) is not available.

Likewise, the “LDA exemption” contained in Section 613(h) is not applicable to the facts outlined in the September 6 Letter. FARA’s implementing regulations state that “[i]n no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.” 28 C.F.R. § 5.307. While [Client Firm] will be drafting statements and engaging with U.S. Government officials and representatives on behalf of the Companies’ interests, its activities on behalf of its foreign principals are “to promote the transition of control over [Foreign Company] and its assets from the [Sanctioned] Regime to the [Legitimate] Government.” September 6 Letter, p.2. The [Legitimate] Government is clearly the principal beneficiary of this conduct and, therefore, [Client Firm] may not avail itself of the LDA exemption.

III. Conclusion

Accordingly, we find that [Client Firm] is obligated to register under FARA. We ask that registration be accomplished within 30 days of the date of this letter. We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [FARA Attorney] at 202-233-0776, or at FARA.Public@usdoj.gov, if you have any questions.

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit