



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 8, 2021

Via E-mail

[name and address]

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

Dear [Name],

This is in reference to your letter of September 10, 2021 (“the September 10 Letter”), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligations of your client, the [organization], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”).

In the September 10 Letter, you describe the [organization] as an independent, not-for-profit global charitable organization headquartered in the [foreign country]. Per the September 10 Letter, the [organization] was established by the [foreign country] government pursuant to the [foreign country law] and seeks to promote a better understanding of the [foreign country] within the international community and to increase friendship and goodwill between the [foreign country] and the rest of the world through various exchange programs. The [organization]’s 2020 Annual Report describes the [organization] as “a public diplomacy organization . . . enhancing the value of [foreign country law] and helping people all around the world to become friends of [foreign country law].”¹ And the “Message from the President” on the [organization]’s website² describes the role of the [organization] in the modern [foreign country region]:

[block quote from organization’s website]

The President’s message further describes his vision for the [organization]’s future: “We must develop [foreign country] further and let the world know of our excellence . . . I believe that establishing [foreign country]’s status among the international community in an attractive way is the goal that today’s [foreign country] public diplomacy should strive to achieve.”

According to the September 10 Letter, the [organization] carries out its mission in a variety of ways. The [organization], “extends support to prominent universities outside of [foreign country] for the establishment of [foreign country] studies, professorships, and the employment of faculty members and visiting professors to advance [foreign country]-related education and scholarship.” The [organization] “organiz[es] and support[s] a variety of performances and exhibitions to introduce [foreign country] arts and culture to the international community.” And, the [organization] “organizes international conferences,” and “invites distinguished leaders and next-generation leaders to [foreign country] for general in-country experience and visits to relevant organizations.”

Generally speaking, 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

¹ [organization] 2020 Annual Report at 2; *available at* [website].

² “Message from the President,” *available at* [website] (last visited September 21, 2021).

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 and is engaged in specified activities enumerated in the Act. 22 U.S.C. §§ 611(c)(1) and 612. The term “foreign principal” under the Act includes “a government of a foreign country,” but also “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)(1) and (3). Among the enumerated activities are “political activities,”³ “act[ing] within the United States as a public relations counsel [or] publicity agent,” or “solicit[ing], collect[ing], disburse[ing], or dispense[ing] . . . loans, money, or other things of value.” 22 U.S.C. § 611(c)(1)(i)-(iii). Under 22 U.S.C. § 613(e), persons who are agents of foreign principals and would otherwise be required to register, but engage “only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts” are exempt from FARA’s registration requirements. However, such an exemption is not available for a person or organization engaged in “political activities.” 28 C.F.R. § 5.304(d).

The September 10 Letter stresses the independent nature of the [organization] and describes it as being disassociated from the Government of the [foreign country] via both its funding mechanism⁴ and governing structure.⁵ The September 10 Letter states that “the [organization]’s activities are not directed or controlled by the [foreign country government] nor by any other government entity.” As an initial matter, we disagree with that characterization of the [organization]’s relationship with the [foreign country] government. As described in the September 10 Letter, the government of the [foreign country] is able to exercise control, albeit indirectly, over the [organization] via the funding scheme—essentially, a tax, implemented by the government of the [foreign country], on [foreign country] passport applications—and the ability to select the chairperson—a task assigned to the President of the [foreign country].⁶ Such an organizational structure puts the [organization] squarely within FARA’s definition of a foreign agent, which provides, in part, that such agents are persons “whose activities are directly or *indirectly* supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.” 22 U.S.C. § 611(c) (emphasis added). The government of the [foreign country] is undoubtedly a foreign principal. 22 U.S.C. §§ 611(c)(1). And, because the [organization] disperses money or things of value to a variety of institutions, organizations, or persons in the United States in support of its mission, the [organization] is a foreign agent for purposes of FARA.⁷ Accordingly, if no exemption applied, an obligation to register would

³ FARA 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 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).

⁴ The September 10 Letter describes a funding mechanism whereby the [organization]’s operating expenses are primarily underwritten via the [foreign government fund], which is, itself, funded via fees associated with [foreign country] passport issuance, as well as a small portion coming from private donations. The September 10 Letter describes this as “disconnected from political processes and government influences.”

⁵ The [organization] is managed by a board of directors, with a chair appointed by the President of [foreign country], and auditor appointed by the Minister of Foreign Affairs, and up to seven additional directors appointed according to the recommendation of the chairperson.

⁶ “As used in the Act, the term *control* . . . shall be deemed to include 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).

⁷ As an example, the September 10 Letter provides a link to the [organization]’s 2020 Annual Report which describes providing “Salary Support” to [foreign country]-related programs at multiple U.S. colleges and universities.

attach to the [organization]’s operations within the United States because it engages in at least one of the enumerated activities described in 22 U.S.C. § 611(c).

However, the September 10 Letter contends that the § 613(e) exemption from FARA registration for “activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts” should apply to the [organization]’s United States operations. The September 10 Letter describes three categories of activities the [organization] engages in—“(1) Support for [foreign country] Studies Overseas; (2) Support for Cultural Exchange; and (3) Global Networking Activities”—and states that each is either a bona fide scholastic, academic, or fine arts-related pursuit. Accepting these characterizations without further inquiry, however, is not the end of our analysis. First, the § 613(e) exemption is applicable when a person engages *only* in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts. Second, the § 613(e) exemption is not available for a person or organization engaged in “political activities.” 28 C.F.R. § 5.304(d). Accordingly, we must look to whether the [organization] “believes” or “intends” any of its activities 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).

Here, we believe the [organization]’s statements in its Annual Reports and on its website are determinative. The 2020 Annual Report describes the [organization] as “a public diplomacy organization,” and describes the [organization]’s goal as “helping people all around the world to become friends of [foreign country].” That is, the [organization] intends to influence the public to be positively disposed towards the [foreign country] (e.g., “establishing [foreign country]’s status among the international community in an attractive way”). More specifically, the [organization]’s “Message from the President” describes the mission of the [organization] as to support the “[foreign country] government’s efforts to achieve peace [in the region] and gain the unwavering trust of international society.” A significant number of the activities in which the [organization] is engaged and is considering engaging in going forward could be considered to be “activities in furtherance of bona fide religious, scholastic, academic or scientific pursuits or of the fine arts,” as described in 22 U.S.C. §613(e). Nonetheless, the [organization]’s own statements describe concrete, if generalized, goals for influencing members of the public in the nations where the [organization] is active, including the United States.

Accordingly, based on our review of your letter and information disclosed by the [organization], we have concluded that the Government of the [foreign country] exercises control over the [organization] and that two facets of your client’s activities require registration under FARA. First, as defined by Section 611(o) of the Act, “political activities” include activities that a person “believes will, or that the person intends to, in any way to influence . . . 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[.]” The [organization]’s activities fall within this provision because the [organization] believes and intends that its actions will influence members of the United States public to view the [foreign country] in a positive light and, thus, ultimately foster beneficial U.S. foreign policies in regards to the [foreign country]. Second, even if the activities are not believed or intended to ultimately influence U.S. foreign policy in regards to the [foreign country], Section 611(o) further defines “political activities” as activities that a person believes will, or intends to, in any way influence 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 a foreign political party.” The [organization] satisfies this

definition because it believes and intends that its actions will induce sections of the United States public to support the “[foreign country] government’s efforts to achieve peace [in the region] and gain the unwavering trust of international society.”

Registration is accomplished through FARA eFile found on the FARA website at <http://www.fara.gov>. If you have any questions regarding this matter, please contact [attorney] at [phone number].

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit