



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 27, 2021

**Via Email**

[name of lawyer]

[firm]

[address]

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

Dear [name]:

We write in response to your letter of July 27, 2021, and your e-mail communication of August 27, 2021,<sup>1</sup> in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of your client, [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 [redacted], and copies of scope of work agreements entered into by [company] and [redacted] [government tourism entity]. Based upon the representations made in the submission, we have determined that [company] is acting as “an agent of a foreign principal,” pursuant to Section 611(c) of the Act, in connection with public relations services it has been providing, and continues to provide, to [government tourism entity].

According to [your submission], [company] is a public relations firm based in [city], and is a division of [redacted]. The [submission] discloses that [company] has been providing public relations services to [government tourism entity] since 2017, and most recently, signed a new contract with [government tourism entity] on [redacted].<sup>2</sup> The [submission] describes the purpose of [company’s] public relations activities on behalf of [government tourism entity] as “mak[ing] [redacted] a premier travel destination for U.S. travelers, thereby generating increasing revenue for [redacted],” which include “private investors, hotels, and tour operators, all of whom have a direct and significant financial interest in promoting travel to [foreign destination].”<sup>3</sup> According to [submission], [company’s] public relations campaign involves showcasing [foreign destination] as a safe travel destination in terms of both crime and COVID-19.<sup>4</sup> The [submission], supported by the current contract, highlights specific activities that have been undertaken and will continue to be undertaken in support of the public relations campaign, such as [redacted].<sup>5</sup> The [submission]

<sup>1</sup> Your e-mail communication included supplemental information about your client’s activities, including scope of work documents provided by your client.

<sup>2</sup> A copy of the contract, entitled: “[redacted]”, was provided as an attachment to your e-mail dated August 27, 2021.

<sup>3</sup> [submission] at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* [redacted].

asserts that [company] has not and will not conduct any outreach to U.S. Government agencies or officials.<sup>6</sup>

The [submission] describes [government tourism entity] as an independent, non-governmental body dedicated to promoting the [foreign destination's] tourism facilities and assets, both nationally and internationally.<sup>7</sup> The [submission] asserts that the [government tourism entity] does not receive funding from [foreign country's] central government, [redacted], but rather, is funded by private funds from travel partners across [foreign destination], and from a tourism tax of [redacted]% that is authorized by [foreign government agency] and is paid by all international travelers visiting [foreign destination]. This funding goes directly to the [government tourism entity].<sup>8</sup> The [submission] asserts that private funds represent 70% of the [government tourism entity's] budget, while the [government-imposed] tourism tax represents about 30% of the [government tourism entity's] budget. The [submission] notes that the [government tourism entity's] Advisory Board is a supervisory body comprised of 5 members, of which 2 members are representatives of the [foreign] government. The [submission] further notes that the [government tourism entity] works “in coordination” with [foreign] government officials to ensure that [government] funds are used in the most effective manner possible, but denies that the [foreign] government's participation in the Advisory Board or the tourism tax enables the [foreign] government to ultimately direct or control the [government tourism entity's] activities.<sup>9</sup> As disclosed by the [submission], the structure of the [government tourism entity] is published to the public [redacted].<sup>10</sup>

[Company] asserts that it is entitled to an exemption from registration pursuant to 22 U.S.C. § 613(d). We do not agree.

As a preliminary matter, a party is an “agent of a foreign principal” who, absent an exemption, 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 controlled, financed, or subsidized in whole or in major part by a foreign principal,” and within the United States, “engages in political activities”<sup>11</sup> or “acts . . . as a public relations

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<sup>6</sup> *Id.*

<sup>7</sup> The [submission] provides a reference to [redacted] to locate additional information about [foreign destination]. [citation]. This page did not reveal much information about the [government tourism entity], but our visit to the [redacted] page of the website noted a description of the [government tourism entity board] as an “official [redacted].” The website and [submission] use the terms “[government tourism entity]” and “[foreign location]” interchangeably to refer to the [government tourism entity].

<sup>8</sup> [submission] at 1-2.

<sup>9</sup> *Id.*

<sup>10</sup> The webpage associated with the link, part of the [government tourism entity's] [foreign]-language website, suggests that the [government tourism entity] is part of the [foreign] government.

<sup>11</sup> Under FARA, 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

counsel,<sup>12</sup> . . . [or] information-service employee<sup>13</sup> . . . for or in the interests of such foreign principal.” 22 U.S.C. § 611(c)(1)(i) and (ii).

[Company] puts forth facts in the [submission] confirming that it is an agent of the [government tourism entity] by means of its providing public relations services on behalf of the [government tourism entity], a foreign principal.<sup>14</sup> We note that the [foreign government] is also a foreign principal under FARA, and that the [government tourism entity] is part of the [foreign] governmental structure.<sup>15</sup> Moreover, based on the facts put forth in the [submission] and the definitions set out in FARA, [company] has also been acting as public relations counsel and an information-service employee for the [government tourism entity] because it has been disseminating informational materials on behalf of the [government tourism entity] which promote the advantages of tourism to the [foreign destination] and which attempt to influence American tourists to travel to the [foreign destination].

Having established that [company] is an “agent of a foreign principal,” as defined by FARA, we turn to the question of whether [company] has put forth a valid claim for an exemption pursuant to Section 613(d) of the Act (“commercial exemption”). Under Section 613(d) of FARA, an agent of a foreign principal may be exempt from FARA’s registration requirements if it engages “only” (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of the foreign principal; or, (2) in other activities not serving predominantly a foreign interest.” 22 U.S.C. § 613(d) (emphasis added). Under FARA’s implementing regulations, “[t]he burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300.

With respect to the first basis of the commercial exemption (§ 613(d)(1)), in order to qualify

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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).

<sup>12</sup> Under FARA, the term “public-relations counsel” includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal. 22 U.S.C. § 611(g).

<sup>13</sup> Under FARA, the term “information-service employee” includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country. 22 U.S.C. § 611(i).

<sup>14</sup> Under FARA, the term “foreign principal” includes 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(a)(2).

<sup>15</sup> Under FARA, the term “foreign principal” includes a government of a foreign country and a foreign political party. 22 U.S.C. § 611(a)(1). FARA further defines “government of a foreign country” as including “any person or group of persons exercising de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country[.]” 22 U.S.C. § 611(e). [citation redacted].

for this exemption, the claimant's activities must be both private and nonpolitical. To that end, FARA's implementing regulations provide that:

[the] activities of an agent of a foreign principal . . . in furtherance of the bona fide trade or commerce of such foreign principal shall be considered "private," even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government.

28 C.F.R. § 5.304(b).

Although the exemption can apply even in cases where the foreign principal is owned or controlled by a foreign government, in this case, [company's] promotion of tourism for the [government tourism entity], a body in which the [foreign government] has a significant interest, cannot be construed as private and nonpolitical activity.<sup>16</sup> Among other things, tourism creates an influx of capital and host of jobs for the locality, both of which, in this case, serve the political and public interests of the [foreign government].<sup>17</sup> [Company's] messaging activities promoting the interests of the region are for the purpose of influencing American tourists to travel to [foreign destination], to the benefit of the [foreign government], and thus, are "political activities." The [foreign government] has "political jurisdiction" over [foreign destination], a part of [foreign country], making it a foreign government for purposes of FARA. *See* 22 U.S.C. § 611(e). Thus, [company] cannot benefit from the commercial exemption because its political activities directly benefit a foreign government.<sup>18</sup> *See* 28 C.F.R. § 5.304(c).

With respect to the second basis of the commercial exemption (§ 613(d)(2)), FARA's implementing regulations provide:

[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 where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or political party and the political activities do not directly promote the public or political interests of a foreign government or foreign political party.

28 C.F.R. § 5.304(c).

Although the [submission] asserts that neither the tourism tax nor the [foreign] government's participation in the Advisory Board enables the [foreign] government to ultimately

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<sup>16</sup> This has long been the view of the FARA Unit. *See* Adv. Op., January 20, 1984, *available at* <https://www.justice.gov/nsd-fara/page/file/1046156/download>.

<sup>17</sup> *Id.*

<sup>18</sup> Such activities are also not nonpolitical and, thus, not exempted under § 613(d)(1) of the Act.

direct or control the [government tourism entity's] activities, it is not clear that [company's] public relations activities and its activities as an information-service employee are being taken solely in direct furtherance of the bona fide commercial, industrial, or financial operations of the [government tourism entity]. On the other hand, it is plain that [company's] public relations and information service activities, taken in support of promoting tourism to the [foreign destination], are political in nature and promote the public and political interests of the [foreign government], of which the [government tourism entity] is an organizational part. Promotion of tourism, among other things, is a means of promoting economic development in the [foreign destination] region to the benefit of the [foreign government].<sup>19</sup>

Moreover, it is evident that a number of the activities to be undertaken by [company], under the current [redacted] agreement, directly promote the interests of the [foreign government] and are not “other activities not serving predominantly a foreign interest” within the meaning of Section 613(d)(2) of the Act. Among other things, [company] notes that its approach to public relations in the United States will be to “protect the reputation of [foreign destination] and to support [foreign destination's] ability to “separate[] [foreign destination's] international perception from the rest of [foreign country].”<sup>20</sup> The current [redacted] agreement notes current political challenges in local and national situations (in [foreign country]) which have threatened the reputation of [foreign destination], as well as the effect of government regulations in response to [redacted] that have had a negative effect on the travel industry.<sup>21</sup> [Company's] activities undertaken under the [redacted] agreement, are not only in furtherance of the [government tourism entity's] bona fide trade or commercial interests, but are in furtherance of the economic and reputational interests of the [foreign government]. [Company's] public relations activities in support of tourism and economic development not only serve the public and political interests of the [foreign government], but are themselves, “political activities” requiring registration.<sup>22</sup>

Please effect [company's] registration within 30 days of the date of this letter. Useful information and forms may be found on our website at <http://www.fara.gov>.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). If you have any questions, please contact [redacted] at 202-233-0776, or send an e-mail to [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov).

Sincerely,

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<sup>19</sup> This, too, supports long-standing positions of the FARA Unit on the question of political activities. *See* Adv. Op., July 19, 1988 (“promoting economic investments in the [foreign local jurisdiction] is considered ‘political activity’ as that term is defined in Section 1(o) of the Act.”), available at <https://www.justice.gov/nsd-fara/page/file/1046161/download>.

<sup>20</sup> 2021-2022 Scope of Work at 1.

<sup>21</sup> *Id.*

<sup>22</sup> 22 U.S.C. § 611(o).

[name]  
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*/s/ Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit