



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 29, 2021

**By FedEx**

[name]

[address]

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

Dear [name]:

We write in response to your letter of September 13, 2021, and enclosed Partnership Agreement, received by this office on September 28, 2021, requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to your obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Your request arises from your intention to accept employment as a Regional Liaison Manager for [foreign company], based in [foreign country]. Based on the representations made in your submission, we have determined that you are not obligated to register under the Act because your proposed activities are private, non-political, commercial activities which qualify for the exemption set out at Section 613(d)(1) of the Act.

According to your submission, you have been offered a job as Regional Liaison Manager for [foreign company] in the United States. The Partnership Agreement outlines that in exchange for a monthly payment of [dollars], you will perform the following services: “(A) Communicate and work towards growth of both parties with mutual respect and integrity. (B) Liaise with USA [deleted] customers of the [foreign company] via phone and email. Follow up customers with overdue invoices (delinquent account). (C) Collect and process payment from such customers for delinquent account(s). (D) Remit 95% of collected payments (less bank charges) to the [foreign company] or any individual or company as required by the Corporation and retain 5% as commission for the Partnership. (E) Provide weekly report on contractor’s communication with customers.”

A party is an “agent of a foreign principal” who must register under FARA if it acts “as an agent, representative, employee, or servant, or in any other 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:

- (i) engages in political activities<sup>1</sup> for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee

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<sup>1</sup> 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).

or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal;  
or,

(iv) within the United States represents the interests of such foreign principal before any agency of the United States.

See 22 U.S.C. § 611(c)(1).

Based on the facts provided, you would be acting as an agent of a foreign principal within the meaning of FARA and would be required to register absent an exemption. [Foreign company] is a “foreign principal” within the meaning of 22 U.S.C. § 611(b)(2). As an employee and contractor, you are acting as an agent of [foreign company], a “foreign principal,” because you are acting under [foreign company’s] “direction or control” pursuant to the agreement provided with your letter. See 22 U.S.C. § 611(c)(1). Further, pursuant to the agreement, you will be collecting and processing payments on behalf of [foreign company], and thus you would be engaging in soliciting, collecting, disbursing, or dispensing money within the United States on behalf of [foreign company] that, absent an exemption, requires registration under FARA. 22 U.S.C. § 611(c)(1)(iii).

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 such foreign principal; or, (2) in other activities not serving predominantly a foreign interest.” 22 U.S.C. § 613(d) (emphasis added).

With respect to the first part of the exemption, FARA’s implementing regulations provide: “As used in section 3(d), the term *trade or commerce* shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any time.” 28 C.F.R. § 5.304(a).

The activities described in your submission are confined to commercial activities such as customer communications and payment collection. There is no mention of you engaging in political or other activities referenced in FARA that would render your activities anything other than “private and nonpolitical in furtherance of the bona fide trade or commerce” of the foreign principal, [foreign company]. Therefore, we find that the activities described in your submission are being undertaken solely for the purpose of furthering [foreign company’s] commercial interests and are, therefore, exempt from the registration requirements of FARA.

[name]  
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Please note that any change in the facts and circumstances you related to us may change your registration status. If any such change does occur, you should contact us immediately.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [attorney] at (202) 233-0776, if you have any questions.

Sincerely,

*/s/ Jennifer K. Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit