



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 6, 2022

[REQUESTOR NAME]
[U.S. ENTITY]

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

Dear [REQUESTOR NAME]:

We write in response to your letter of [DATE], requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to [U.S. ENTITY'S] 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") and the application of the commercial exemption pursuant to 22 U.S.C. § 613(d).¹ Based entirely on the representations you made in your request and in response to follow-up questions from the Department of Justice, we have concluded that [U.S. ENTITY] is not obligated to register as an agent of [FOREIGN COUNTRY] at this time.

As you are aware, 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 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 engages in one of the enumerated activities triggering registration. 22 U.S.C. § 611(c)(1). As pertinent to this request, such activities include "engag[ing] within the United States in political activities for or in the interests of such foreign principal." § 611(c)(1)(i).

According to your [DATE] Letter, [U.S. ENTITY] was established to "attract[] private sector companies involved in [INDUSTRY] activities to invest in [CATEGORY OF FOREIGN] countries to improve [CIRCUMSTANCES] for a targeted nation." [DATE] Letter at 1. You have identified [THIRD PARTY FOREIGN COUNTRY] as the first targeted nation. *Id.* To this end, [U.S. ENTITY] intends to fulfill an agreement with [FOREIGN COUNTRY] to complete "a [LENGTH OF TIME] project to establish a plan to identify and bring together the various private sector entities necessary to establish a world class [INDUSTRY] system for [THIRD PARTY FOREIGN COUNTRY]." *Id.* Under the Statement of Work ("SOW") between [U.S. ENTITY] and [FOREIGN COUNTRY], you seek to "leverage the intent of [INTERNATIONAL AGREEMENTS] . . . to support the development of [INDUSTRY] systems in [THIRD PARTY FOREIGN COUNTRY]." SOW at 1. As part of the agreement, the "[FOREIGN COUNTRY]

¹ This exception to the obligation to register is available to "any person engaging or agreeing to engage 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).

² [INTERNATIONAL AGREEMENTS] refers to a series of joint statements and agreements finalized in [DATE] between [MULTIPLE COUNTRIES] that [RESULT OF AGREEMENTS] between [FOREIGN COUNTRIES] and committed to [RESULT OF AGREEMENTS]. *See*, [WEBSITE].

will pay [U.S. ENTITY] \$[AMOUNT] in two separate payments to fund the project for a period of [LENGTH OF TIME].”³ [DATE] Letter at 1.

Under FARA, the term a “foreign principal” includes “a government of a foreign country.” 22 U.S.C. § 611(b)(1). Here, the government of [FOREIGN COUNTRY] has contracted with you to provide a service and is financing your activities. As such, the government of [FOREIGN COUNTRY] is a foreign principal under the Act.

While the activities you have described include engaging with the private sector in the United States and abroad, on behalf of [FOREIGN COUNTRY], these activities do not include political activities as they do not constitute efforts to “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). On the contrary, the [DATE] Letter, your responses to follow-up questions from the Department of Justice on [DATE] and [DATE], the SOW, and [U.S. ENTITY]’s Concept Note, all of which you provided the Department of Justice, indicate that [U.S. ENTITY] does not intend to engage in such political activities.

For example, you affirm that [U.S. ENTITY] has “no plans or intention to lobby the United States (US) government for any policy or funding associated with private sector investment in [FOREIGN COUNTRY],” and that it “is not representing or advocating on behalf of [FOREIGN COUNTRY] or [THIRD PARTY FOREIGN COUNTRY] before the US government.” [DATE] Letter. Moreover, you assert that “[U.S. ENTITY] has NOT been asked to represent [FOREIGN COUNTRY] or the government of [THIRD PARTY FOREIGN COUNTRY] or promote their governments or request any US government funding, and [U.S. ENTITY] will not be undertaking any such activities.” [DATE] Letter at 2. Rather, you explain, “[t]he sole focus [of the activities that are the subject of your request] is private and non-political and is not being undertaken to promote the public or political interests of a foreign government.” *Id.*

In addition, [U.S. ENTITY]’s SOW with [FOREIGN COUNTRY] describes [U.S. ENTITY]’s engagement with [ENTITIES] from the United States “that can add specific expertise increasing the knowledge base of [THIRD PARTY FOREIGN COUNTRY] producer.” SOW at 1. You assert that “[w]hile [INTERNATIONAL AGREEMENTS] created this new opportunity for collaboration, given the limited scope of [U.S. ENTITY]’s role in supporting the development of a [INDUSTRY], [you] do not expect to be asked about or in a position to engage in discussions regarding [INTERNATIONAL AGREEMENTS].” [DATE] Letter at 1. Finally, you assert that “[U.S. ENTITY] has not been asked to and has no plans to publicize [FOREIGN COUNTRY’S] successes that might result from this project.” *Id.*

These activities, as you have described them, are not political activities under 22 U.S.C. § 611(o). As such, if [U.S. ENTITY] proceeds with this project, it will not be acting as an agent of

³ “The first payment of \$[AMOUNT] was received but the political situation in [THIRD PARTY FOREIGN COUNTRY] put the project on a temporary hold.” [DATE] Letter at 1. However, “the expectation is that the political situation will be resolving itself in the near future and the project will be able to move forward.” *Id.*

[FOREIGN COUNTRY] carrying out activities requiring registration pursuant to 22 U.S.C. § 611(c)(1).⁴

Please note that this advisory opinion is based entirely upon the facts set forth in your [DATE] Letter, [DATE] Response, [DATE] Response, and attachments thereto. Our determination must be revisited in the event that any of the facts or circumstances described in your letters change. For example, should [U.S. ENTITY]’s activities change in a way such that it begins to engage in the activities enumerated in 22 U.S.C. § 611(c),⁵ including political activities as defined in § 611(o), [U.S. ENTITY] may have an obligation to register.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact us at (202) 233-0776 or FARA.Public@usdoj.gov, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit

⁴ Additionally, [U.S. ENTITY]’s SOW with [FOREIGN COUNTRY] “will require the investment of actors from across the private sector, sovereign wealth funds and others.” SOW at 1. Should [U.S. ENTITY] seek such investments in the United States, it would be acting as an agent of a foreign principal under 22 U.S.C. § 611(c)(1)(iii) by “solicit[ing], collect[ing], disburse[ing], or dispense[ing] contributions, loans, money, or other things of value for or in the interest of such foreign principal” in the United States. However, based on your representations, the commercial exemption, 22 U.S.C. § 613(d), would apply. Under § 613(d), 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.” (emphasis added). With respect to the commercial exemption, FARA’s implementing regulations provide the following:

[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).

⁵ 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 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” does any of the following:

- (i) engages within the United States in political activities for or in the interests of such foreign principal;
- (ii) acts 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 solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

22 U.S.C. § 611(c).