U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

February 9, 2018

[addressee deleted]

Re: Advisory Opinion pursuant to 28 C.F.R. §5.2 concerning Application of the Foreign Agents Registration Act

This is in reference to your letter of January 5, 2018, in which you enclose a request from your client, [US firm], for an advisory opinion pursuant to 28 C.F.R. § 5.2 regarding the possible obligation of [US firm] to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* ("FARA" or the "Act").

As you know, the purpose of FARA is to inform the American public of the activities of foreign agents working for foreign principals to influence U.S. government officials and/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. The term "foreign principal" includes "a government of a foreign country and a foreign political party, any person outside the United States. . ., 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, a party 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" and engages in one of the following activities:

> (i) engages within the United States in political activities for or in the interests of such foreign principal;
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> (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;
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> (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 or official of the Government of the United States[.]

22 U.S.C. § 611(c).

[US firm] informs us that it is a consultancy firm that represents domestic and international clients on a variety of political, public relations, and business development/private

equity matters. [US firm] discloses that it was recently retained by [foreign corporation], a private firm that is incorporated in [foreign country 1] with offices in [foreign country 2] and [US city], to foster commercial and international investment-related outreach opportunities for private companies and investors from [foreign country 1] into the United States. [US firm] indicates that it will render the following services: making senior level introductions and thereby fostering dialog between companies and their executives; arranging visits for [foreign country 1] executives to explore business opportunities in the U.S., and [regions of the world]; analyzing and presenting investment opportunities to [foreign government 1] companies; and engaging subcontractors and partners to ensure maximum value for [foreign corporation] and its clients. These activities would extend until February 2018. [US firm] further discloses that it is not yet registered as a lobbyist pursuant to the Lobbying Disclosure Act, but that it could register in relation to the above-described activities. [US firm] states that [foreign corporation] does not represent the interests of the [foreign country 1] or its government and that the services rendered by [US firm] are intended to promote the economic and commercial interests of [foreign corporation] on behalf of its private clients.

[Foreign corporation] is a foreign corporation and thus is considered a "foreign principal" pursuant to the definition set out at 22 U.S.C. § 611. While [US firm] may be considered an "agent of a foreign principal," it maintains that its activities are commercial in nature and that no political activities are proposed, and thus asserts that these activities are exempt from registration under Section 613(d)(1) because they are "private and non-political activities in furtherance of the principal's bona fide trade or commerce." [US firm] also asserts that these activities are exempt from registration under 613(d)(2) because they do not serve predominantly a foreign interest. Based upon the foregoing representations in [US firm]'s letter describing the nature and extent of activities proposed to be undertaken by [US firm] on behalf of [foreign corporation], we do not contest its contention that the proposed activities are exempt from registration under FARA pursuant to Section 613(d).

Please note that the question of obligation or exemption must be revisited as the nature of the activities changes. Thus, should [US firm]'s activities for [foreign corporation] change in that they are directed by [foreign corporation] or the [foreign government] to engage in political activities that directly promote the public or political interests of the [foreign government] or a foreign political party, a registration under FARA would be required because [US firm] would be acting as an agent of a foreign principal by engaging in non-exempt political activities on behalf of a foreign principal. 22 U.S.C. § 611(c)(1). In this instance, [US firm] should contact this Unit immediately in order that we may reexamine whether it has an obligation to register under FARA at that time.

If you have any questions regarding this matter, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Heather H. Hunt, Chief
FARA Registration Unit