



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

May 3, 2018

Via Email and First Class Mail

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of March 8, 2018, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of your client, [US law firm], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations made in your letter, we have determined that [US law firm] would be exempt from registration under the Act pursuant to Section 613(g) as long as it limits its activities to those you have outlined.

We understand [US law firm] to be a Washington, D.C.-based law firm representing clients in a variety of matters, including issues that relate to international sanctions regimes initiated and administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). According to your letter, [US law firm] has been retained by [foreign bank], a privately-owned bank of [foreign country], and [foreign person],¹ to provide legal services in connection with a potential designation of [foreign bank] and [foreign person] by OFAC pursuant to [foreign country] Sanctions Program, [CFR citation deleted]. According to your March 8, 2018, letter, and your description of an October 20, 2017, engagement letter between [US law firm] and [foreign bank] and [foreign person], the scope of [US law firm]’s representation will be limited to providing “legal services related to any investigation, proceedings, or prosecutions by the United States Department of Justice, and/or any other relevant U.S. government agency against the Clients [foreign bank and foreign person].” Although not currently designated by OFAC pursuant to the [foreign country] Sanctions, it is foreseeable that [foreign bank] and [foreign person], could be so designated according to information provided in your letter, available from other sources.² In that regard, you note that [US law firm], concerned that OFAC would designate its clients, [foreign bank and foreign person], wrote to OFAC on December 8, 2017, asking that OFAC delay any designation

¹ [text deleted]

² [text deleted]

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May 3, 2018

Page 2

of [foreign bank] and [foreign person] until they are afforded an opportunity to present responsive information and documents to address the allegations leading to the designation by OFAC.³

We concur with the conclusion that [US law firm] is acting as an agent of [foreign person and foreign bank] pursuant to the Act. 22 U.S.C. § 611(b) and (c). At the same time, we recognize that the activities proposed in your letter may fall within one of the exemptions enumerated in FARA. Section 3(g) of the Act, states that a party may be exempt from the obligation to register under the Act if the person:

. . . engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States: *Provided*, That for the purposes of this subsection legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.

22 U.S.C. § 613(g).

The scope of the exemption is clarified in the regulations which state:

Attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute to be conducted on the record, shall include only such attempts to influence or persuade 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 government or a foreign political party.

28 C.F.R. § 5.306.

In examining the two primary activities you described in your letter, first [US law firm]'s representation with respect to any investigation or enforcement proceedings undertaken by the Department of Justice or another U.S. government agency involving [foreign person] or [foreign bank], and second, [US law firm]'s December 8, 2017, request to OFAC on behalf of [foreign person] and [foreign bank], that OFAC stay designation of [US law firm]'s clients until [US law firm] could present facts to OFAC, fall within the definitions set out within Section 3(g) FARA

³ [text deleted]

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May 3, 2018

Page 3

and its implementing regulations.⁴ In particular, the limited scope of [US law firm]'s December 8, 2017, letter to OFAC, appears to stop short of an attempt to influence OFAC's policies regarding its sanctions regime beyond its specific application to [US law firm]'s representation of [foreign person and foreign bank]. If at any point in the future, [US law firm] engages in a discussion or exchange with OFAC that implicates wider policy or political considerations, then it would not be able to avail itself of the exemption and could be required to register.

Accordingly, we have determined that [US law firm] is exempt from registration under FARA because it is limiting its conduct to fall within the parameters described in Section 3(g) of the Act, as further defined by the regulation at 28 C.F.R. § 5.306. We remind you that our determination is limited to the particular facts you have represented in your March 7, 2018, letter and the references contained therein. If any of the facts with respect to activities undertaken by [US law firm] depart in any way from those described in your letter, please notify this office, as [US law firm]'s registration status may change.

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

Sincerely,

Heather H. Hunt, Chief
FARA Registration Unit

⁴ Because we have made a determination of our enforcement intentions based upon the exemption set out in Section 3(g) of FARA, we will not, in this letter, address the exemptions set out in Section 3(d) and (h) of the Act.