U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

July 26, 2018

<u>By FedEx</u>

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of July 5, 2018, in which you request an advisory opinion pursuant to 28 C.F.R. § 5.2 regarding the possible obligation of your 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 within the United States in one of the following activities:

> (i) in political activities for or in the interests of such foreign principal;
>
> (ii) acts as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
>
> (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
>
> (iv) 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).

[addressee deleted]

You state that your firm is a wholly-owned subsidiary of [US law firm] that is engaged in full-service government relations activities. You disclose that your firm represents [Company A - a joint venture with majority ownership by a foreign firm, as well as a 22% interest in the venture by a foreign state-owned entity], [text deleted]. You inform us that [Company A] manufactures [text deleted], for North American customers and does not export the same to [foreign country]. You further inform us that [Company A] is a U.S. joint venture [text deleted] which is majority–owned by a [foreign firm], and a [US company – Company B], and also that [foreign state-owned entity], has a 22% interest in the joint venture. You indicate that your firm has been retained by [Company A] to provide consulting on government relations regarding [text deleted]. You disclose that such activities will include meeting with Members of Congress and federal agencies.

You opine that, because [foreign state-owned entity] has a "manufacturing and financial role in supporting [Company A]," [Company A] may be considered as a "foreign principal" because, pursuant to the implementing regulations found at 28 C.F.R. § 5.100(a)(8), its activities are "directed or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal," [foreign state-owned entity]. We concur with your assessment that [Company A] is a "foreign principal" within the definition as set forth in 22 U.S.C. § 611. Thus, your firm, in consulting with [Company A] on government relations, may be considered an "agent of a foreign principal" as defined in Section 611(c). However, you assert that your activities for [Company A] are exempt from registration pursuant to Section 613(d)(2) because they are commercial in nature, not political, and do not serve predominantly a foreign interest.

Based upon the foregoing representations in your letter describing the nature and extent of activities proposed to be undertaken by your firm on behalf of [Company A], we do not contest your claim that the proposed activities qualify for the exemption from registration under FARA pursuant to Section 613(d)(2) because they do not serve predominantly a foreign interest. The regulations provide that "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 of a foreign political party." 28 C.F.R. §5.304(c).

Please note that the question of obligation or exemption must be revisited as the nature of the activities changes. Thus, should your firm's activities for [Company A] change in that they are directed by [foreign state-owned entity] or the government of [foreign country] to engage in political activities that promote the public or political interests of [foreign country] or [a foreign political party], a registration under FARA would be required because your 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, your 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