



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

August 2, 2018

Via Email and First Class Mail

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of June 5, 2018, in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligations of [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] is exempt from registration under the Act pursuant to Section 613(g).

We understand that [US law firm] is representing the [foreign government ministry] in a pending private arbitration proceeding regarding [text deleted]. The arbitration is occurring because of a mandatory arbitration clause in a contract entered into between [foreign government ministry] and a number of private entities who were awarded a contract for [text deleted]. The contract was terminated before [text deleted] and the arbitration panel will assess monetary claims as a result of the early termination of the contract. We understand, according to your representations, that the United States Government is not a party to the arbitration, however, the [text deleted] has been investigating how funding provided by [foreign bank] has been utilized by [foreign government ministry] in the uncompleted [text deleted].

To that end, [text deleted] provided a draft report to [foreign government] official involved in managing the arbitration and asked for comment on whether the report contained inaccuracies or would otherwise adversely affect the arbitration process. As counsel to [foreign government ministry] in the arbitration, [US law firm] responded to the request for comments. According to your letter, [US law firm] limited its response to factual and process issues related directly to the arbitration and did not address any questions of policy or relations between [foreign country] and the United States.

Although not specifically stated in your letter, we concur with an assessment of the facts indicating that [US law firm] is acting as an agent of [foreign government ministry], pursuant to the Act. 22 U.S.C. § 611(b) and (c). At the same time, we recognize that the activities described and 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:

[name deleted]

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. . . 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 activities undertaken by [US law firm] as described in your letter, namely, responding to a request for comments to an investigative report drafted by [text deleted] on [foreign government ministry]'s expenditures on the [text deleted], and an intention to provide similar comments to products produced by [text deleted] during its investigation of [foreign government ministry]'s expenditures, we find that these activities fall within the definitions set out within Section 3(g) FARA and its implementing regulations.¹ In particular, we note that the limited scope of [US law firm]'s activities, which you report as stopping short of attempts to influence policy, but rather, are limited to representation of [foreign government ministry] in the arbitration and providing comments in response to investigative activity undertaken by [text deleted].

Accordingly, we have determined that [US law firm] is exempt from registration under FARA with respect to its representation of [foreign government ministry], because [US law firm] 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 June 5, 2018, letter. If any of the facts with respect to activities undertaken by [US law firm] in its representation of [foreign government ministry] 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

¹ 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) of the Act.

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[name deleted] or me by telephone at 202-233-0776, if you have any questions.

Sincerely,

Heather H. Hunt, Chief
FARA Registration Unit