



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 20, 2019

Via Email and USPS

[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 January 22, 2019, our meeting of November 29, 2018, and telephone call of December 23, 2018,¹ requesting an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of your client, [US 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, and during our meeting and telephone call, we have concluded that [US firm] may avail itself of the exemption set out in Section 613(h) of the Act. *See* 22 U.S.C. § 613(h).

Your January 22, 2019 letter describes [US firm] and its relevant activities as follows:

[US firm] is a U.S.-based consulting group which, among other things, provides strategic advisory services to clients on the national security aspects of commercial matters. Recently, [US firm] has been in negotiations with the [foreign pension plan board], a foreign entity, to advocate on its behalf before the U.S. Government with respect to the effect of the recently-enacted Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”) upon [foreign pension plan board].² [foreign pension plan board] is, in your description, a professional investment management organization, created by the [text deleted],³ which invests funds for [foreign pension plan].

You represent that the [foreign pension plan] is “an earnings-related mandatory pension plan providing income for [text deleted] workers and their survivors.”⁴ Letter from [name deleted] to Heather Hunt (Jan. 22, 2019), at pp. 2-3. (“January 22, 2019 Letter”). Created by an act of [text deleted] and part of [foreign country]’s national program for retirement and other benefits, [foreign pension plan]’s funds are not government funds because they are generated by

¹ [text deleted].

² [text deleted].

³ [text deleted].

⁴ [text deleted].

mandatory contributions from employees and employers to a statutorily-designated funds separate from government revenues.⁵ This fact, in your view, separates [foreign pension plan] from other pension plans, such as U.S. Social Security or [text deleted] other [foreign country] government-funded pension plans, which rely on tax revenues or other government funds. The funds generated and collected under [foreign pension plan], are invested by [foreign pension plan board], which you assert is a non-governmental entity, and which acts independent of the [foreign government].⁶

Your letter cites to provisions of the [foreign law] and the [foreign Act] that compel an investment-only mandate for [foreign pension plan board] and provide for independence from the [foreign government].⁷ You further note in the January 22, 2019 Letter that, while the directors or [foreign pension plan board] are appointed by the [foreign government] on the recommendation of the Minister of Finance, none of the directors, officers, employees, or agents of [foreign pension plan board] and its subsidiaries are part of the federal public administration, nor can any of the directors be employees of the [foreign government], [text deleted].⁸ [foreign pension plan board], under the [foreign pension plan board law], is obligated to act in the “best interests of [foreign pension plan] contributors and beneficiaries.”⁹

As an initial matter, FARA is a disclosure statute that requires registration of “agents of foreign principals” who are engaged in “political activities” or other specified activities under the Act. 22 U.S.C. 611(c). You acknowledge that [US firm] is an agent of [foreign pension plan board], a foreign principal under FARA, and that [US firm] will be engaging in “political activities” under the Act.¹⁰ Those activities include advocacy and lobbying before Members of Congress and their staff, United States Government agencies (including CFIUS and the Department of the Treasury), state and local government officials, trade associations, labor unions, members of the press, and industry leaders in the United States and abroad. Absent an exemption, your client, [US firm], would have to register under FARA.

However, as noted in your letter, agents of entities and persons other than agents of foreign governments and foreign political parties, when engaging in lobbying activities and registered under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 *et seq.*, may be exempt from registration under FARA in connection with the agent’s representation of such entity or person. *See* 22 U.S.C. § 613(h) (“the LDA exemption”). The LDA exemption from registration under FARA is tempered by FARA’s implementing regulations, which state that “[i]n no case where a foreign government or foreign political party is the principal beneficiary will the [LDA] exemption . . . be recognized.” 28 C.F.R. § 5.307.

To that end, your letter makes a number of assertions to demonstrate that [US Firm] is

⁵ January 22, 2019 Letter, p. 3.

⁶ *Id.*

⁷ *Id.*, p. 4.

⁸ [text deleted].

⁹ [text deleted].

¹⁰ *Id.*, p. 2. The term “political activities” includes “any activity that the person intends to . . . influence any agency or official of the Government of the United States.” 22 U.S.C. § 611(o).

engaged in activities that properly qualify for the LDA exemption – namely, lobbying before Congress and other federal agencies. Your letter notes that [US company]’s foreign principal, [foreign pension plan board], is not a foreign government or foreign political party requiring registration under FARA, and that [US company] will be registering under LDA for lobbying activities on behalf of [foreign pension plan board].¹¹

In addition, your January 22, 2019 Letter addresses the regulatory limitation on the LDA exemption. The letter asserts that “[foreign pension plan board] does not make investments for the purpose of implementing, advancing, or promoting policies of the government of [foreign country].”¹² You further note that under the [foreign pension plan board law], the directors of [foreign pension plan board] owe their fiduciary duty to [foreign pension plan board] and, ultimately, to the [foreign pension plan] beneficiaries.¹³ Under the [foreign pension plan law], funds paid into [foreign pension plan] are, by operation of the statute, segregated from other [foreign government] funds and that [foreign pension plan] funds are only to be used to the benefit of [foreign pension plan] beneficiaries.¹⁴ Moreover, the letter notes that the [foreign pension plan board code] forbids its employees from allowing any of [foreign pension plan board]’s business activities to be subject to political interference and requires employees to report any suspicions of political interference.¹⁵ You further assert that the mandate of [foreign pension plan board] and its Directors is to operate at arm’s length from governments with an investment-only mandate.¹⁶ You conclude that [foreign pension plan board]’s mandate and the restrictions on its activities ensures that there is no direct benefit to the [foreign government], and that the [foreign government] is not the “principal” beneficiary to the conduct, and thus that the LDA exemption applies to [US company]’s proposed activities on behalf of [foreign pension plan board].¹⁷ Based on your representations, we do not dispute your assertion that FARA’s requirements for the LDA exemption are satisfied.

Please note that the availability of the LDA exemption is premised upon [US company]’s timely filing of a registration under the LDA for its lobbying activities on behalf of [foreign pension plan board] and on the facts and representations made in your January 22, 2019 Letter, as well as those made during our meeting of November 19, 2018, and telephone call of December 23, 2018. Thus, should [US company]’s activities for [foreign pension plan board] change in any way, or if [foreign pension plan board]’s activities change in any way, then the question of [US company]’s status under FARA could also change. If that occurs, please contact the FARA Unit immediately so that we may reexamine whether [US company] has an obligation to register under FARA at that time.

¹¹ *Id.*

¹² *Id.*, p. 4.

¹³ [text deleted].

¹⁴ *Id.*; [text deleted].

¹⁵ *Id.*; [text deleted].

¹⁶ *Id.*

¹⁷ While not the case here, there are situations in which a foreign government or political party may not be *the* principal beneficiary, but *a* principal beneficiary of lobbying activities in which the LDA exemption would not apply.

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

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit