



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 4, 2019

**By FedEx**

[addressee deleted]

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

Dear [name deleted]:

This is in reference to your letter of January 22, 2019, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the obligation of your clients, [US person], [US firm], and [US organization], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations in your letter, as well as a review of the disclosure form filed on [date deleted], pursuant to the Lobbying Disclosure Act (“LDA”), we have determined that [US Person, US firm, and US Organization], each have an obligation to register under FARA.

**I. Relevant Facts**

In your letter, you state that the firm is based in Washington, D.C., and engages in government relations and public policy, that [US person] is a principal of the firm, and that he is president of [US Organization].<sup>1</sup> According to your letter, [US Organization] is a Washington, D.C.-based unincorporated association of U.S.-based [ethnicity] organizations dedicated to improving the welfare of the [ethnicity] diaspora, through its mission to improve the United States’ long-term security interests in its relations with [foreign countries], and the [text deleted] through public education and advocacy. [US Organization] accomplishes its mission by regularly publishing commentary, convening discussions among leading [ethnicity] Americans, and advising [foreign countries] officials concerning U.S. policy. You further state that [US Organization] engages with U.S. policymakers regarding [foreign country] security, trade, and other issues. You indicate that [US Organization] advocates on issues relevant to [foreign country] as part of its overall mission, but that issues relating to [foreign country] are a small minority of its work.

While you concede that [US person, US firm, and US Organization] each are engaging in political activity within the meaning of FARA, you contend that they are not acting as foreign agents because their activities are not undertaken at the direction and control of the [foreign government]. While you assert that [US Organization] receives voluntary contributions from

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<sup>1</sup> Your letter also indicates that the firm is registered as a lobbyist for [US Organization] under the LDA.

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[ethnicity] American organizations and individuals, amounting to approximately \$320,000 to \$400,000 per year, the [foreign government] provided \$160,000 to the firm in 2018, and is expected to provide a similar amount in 2019.

## **II. The Foreign Agents Registration Act**

Generally speaking, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as 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.

*See* 22 U.S.C. § 611(c)(1).

Even where agency under FARA is established, a foreign agent may qualify for an exemption pursuant to Section 3(h) of the Act, which exempts a foreign agent from registering under FARA “if the agent has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 [2 U.S.C. § 1601 et seq.].” However, this exemption is not available to agents engaged in political activities on behalf of a foreign government or foreign political party. *See* 28 C.F.R. § 5.307.

## **III. Analysis**

As set forth above, there are two ways under FARA to establish that a person or entity is an “agent of a foreign principal” who must register under FARA. The first occurs when a party acts at the order, request, or under the direction or control of a foreign principal. The second occurs when a party’s activities are “directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.” 22 U.S.C. § 611(c)(1). Thus, where money is received from a foreign government to subsidize ongoing political activities that are relevant and beneficial to that foreign government, that financial support or subsidy establishes an agency relationship under FARA.

With respect to the second prong, the circumstances described in your January 22, 2019, letter provide that the [foreign government], a foreign principal, directly provided \$160,000 in

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funds to [US person] and the firm. Those facts are sufficient to make [US person] and the firm agents under FARA. [US Organization] is also an agent under FARA because [US Organization]'s political activities, conducted by its president, [US person], are directly financed and subsidized "in major part" by the [foreign government] through its payment of funds directly to [US person].

Your letter contends that there must be "direction or control" by a foreign principal to establish the requisite agency relationship. That argument is inconsistent with a plain language of the statute, which identifies "order" and "request" as separate prerequisites, stated in the disjunctive, that give rise to an agency on behalf of the foreign principal. Indeed, in *Attorney General v. Irish Northern Aid Committee*, 668 F.2d 159 (2d Cir. 1982), the court, in determining the scope of "request" under FARA held that, "We agree that the agency relationship sufficient to require registration need not, as INAC urges, meet the standard of the Restatement (Second) of Agency with its focus on 'control' of the agent by the principal." 668 F.2d at 161. Accordingly, even if [US person] does not accept the money from the [foreign government] as posited in the request letter, [US person] and [US Organization] would still be considered agents of a foreign principal if they continue to act at the request, order, or under the direction or control of the [foreign government].

In addition, [US person] and the firm, in concert with [US Organization], admit that they engage in political activities. Your letter states that [US Organization]'s activities "which are undertaken to advance the interests of [ethnicity] Americans are, coincidentally, also in the interests of the people and governments of [foreign countries]." [US person] and the firm also disclose in their LDA disclosure form that, through [US Organization], they engage with U.S. policymakers regarding, "Congressional or Executive branch actions that help build stronger ties between the U.S. and [foreign country], and the U.S. and [foreign country], through the promotion of U.S.-[foreign country] and U.S.-[foreign country] relations."

Because [US person], the firm, and [US Organization] are engaged in political activities within the United States as agents of a foreign principal, specifically the [foreign government], each has an obligation to register under FARA, unless an exemption applies. Section 613(h) of FARA exempts from FARA's registration requirement any agent of a foreign principal "if the agent has engaged in lobbying activities and has registered under" the LDA. As referenced above, [US person] and the firm are registered under the LDA for their lobbying activities on behalf of [US Organization]. However, the LDA exemption is inapplicable here because a foreign government, [foreign country], subsidized, in major part, certain political activities that were undertaken on its behalf by [US person] and the firm. Accordingly, [US person] and the firm cannot rely on the LDA exemption set forth in Section 613(h), and thus must register under FARA. For the same reason, and as noted above, [US Organization] must also register under FARA.

### **Conclusion**

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For the foregoing reasons, [US person, the firm, and US Organization] are obligated to register under FARA. Please effect the registrations within thirty (30) calendar days of the date of this letter. Useful information and forms needed for registration are available on our website at <https://www.fara.gov>. If you have any questions regarding registration, or have additional information to provide, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Brandon L. Van Grack  
Chief, FARA Unit