



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 31, 2020

Via FedEx and E-mail

[Addressee deleted]

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

Dear [Addressee deleted]:

This is in response to your letter dated December 20, 2019 (“December 20 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, [a U.S. 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”). Based on our review of your request, we do not oppose your assertion that the [U.S. firm] qualifies for the exemption from registration under the Act for activities “in furtherance of bona fide religious, scholastic, academic, or scientific, or of the fine arts,” as long as its activities are limited to those described in the December 20 Letter.

According to the December 20 Letter, the [U.S. firm] is a not-for-profit corporation organized under Delaware law and qualified as a public charity under Section 501(c)(3) of the Internal Revenue Code. The [U.S. firm] was formed in 2011 for “the exclusively charitable, educational, scientific and literary purposes of raising public awareness of [Foreign Country]’s art, culture, literature, visual and performing arts.” The [U.S. firm] is led by a Board of Directors comprised of private citizens who are uncompensated for their efforts. The Ambassador of [Foreign Country] to the United States serves as a non-voting, *ex officio* member of the Board with the title of Honorary Chairman. As set forth in its certificate of incorporation, the purpose of the [U.S. firm] includes:

1. Planning, sponsoring, conducting and supporting lectures, seminars, discussion groups and conferences, as well as disseminating and making available to the general public related educational publications and materials, to educate the general public about and raise public awareness of [Foreign Country]’s art, culture, literature and performing arts;
2. Planning, sponsoring, conducting and supporting other educational programs and activities to raise public awareness of [Foreign Country]’s art, culture, literature and performing arts;

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3. Making grants to organizations described in Code section 501(c)(3) to support educational programs relating to [Foreign Country]'s art, culture, literature and performing arts;
4. Cooperating with other charitable organizations whether local, national, international, for any of the foregoing purposes; and
5. Conducting other activities that may be necessary, useful, or desirable for the furtherance or accomplishment of the foregoing purposes, provided that those activities would not endanger the Corporation's not-for-profit or tax-exempt status.

The December 20 Letter also discloses that the [U.S. firm] has worked closely with the [Foreign Country]'s Cultural Mission to the United States, which is the Cultural Services division of the [Foreign Country]'s Embassy in the United States ("Cultural Services"). The [U.S. firm] is engaged in three primary efforts:

1. Organizing the annual "Festival [of the U.S. firm]" which brings together [Foreign Country] and American thinkers, authors, and artists to explore a specific topic (e.g., the themes of the Festival [of the U.S. firm] in 2018 and 2019 were [subject deleted] and [subject deleted]);
2. Bestowing, in conjunction with the Cultural Services, the "[U.S. firm] Prize," an annual literary award which recognizes a work of contemporary [relating to Foreign Country] fiction that has been translated into English and published in the U.S. within the preceding calendar year; and;
3. Raising funds for the further renovation of the [U.S. city] building housing the Cultural Services to be used by the Cultural Services and the [U.S. firm] for their activities (and which is expected to be the subject of a future grant agreement between the [U.S. firm] and the [Foreign Country]'s Embassy).

The [U.S. firm] seeks guidance from the FARA Unit on the application of the Act to these activities, and specifically inquires whether the activities qualify for the exemption pursuant to Section 613(e) for persons engaging or agreeing to engage "only in activities in furtherance of bona fide religious, scholastic, academic, or scientific, or of the fine arts."

Generally speaking, a party is an "agent of a foreign principal" 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, . . . solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal." *See* 22 U.S.C. § 611(c)(1)(iii). The Act defines the term

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“foreign principal” to include “a government of a foreign country.” § 611(b)(1). Accordingly, Cultural Services is a “foreign principal” under the Act, as it is an agency or division of the [Foreign Country]’s Embassy in the United States. If the [U.S. firm] engages in activities on behalf of Cultural Services, it would be acting “at the order, request, or under the direction or control, of a foreign principal.” 22 U.S.C. § 611(c)(1).

We also conclude that the specified activities of the [U.S. firm] would require registration under FARA, absent an exemption. Because the [U.S. firm] raises funds for the renovation of the building housing Cultural Services, and to be used by the Cultural Services and the [U.S. firm] for their activities, it is engaged in soliciting, collecting, disbursing or dispensing contributions, loans, money, or other things of value for or in the interest of its foreign principal, the Cultural Services.

Finally, we consider whether the [U.S. firm]’s activities are exempt from registration pursuant to Section 613(e), which exempts from registration “any person engaging in or agreeing to engage only in activities in furtherance of bona fide scholastic, academic, ... or of the fine arts.” We acknowledge the representation in your letter, which you certified as containing a truthful, correct and complete disclosure of the [U.S. firm]’s activities, that such activities are in furtherance of exclusively charitable, educational, scientific and literary purposes to increase public awareness of [Foreign Country]’s art, culture, literature, visual and performing arts. Therefore, we do not oppose your assertion that the [U.S. firm] qualifies for the Section 613(e) exemption from registration under the Act, as long as its activities are limited to only those described in your December 20 Letter.¹

Please note that our opinion is based solely upon the facts set forth in the December 20 Letter, and must be revisited in the event that any of the facts change. In particular, if the [U.S. firm] engages in any political activities² for the Cultural Services, the [Foreign Country] Embassy or any [Foreign Country] government department or official, or any other foreign government or foreign political party, the [U.S. firm] may not avail itself of the exemption under Section 613(e). In that event, the [U.S. firm] should effectuate a registration within ten (10) days of agreeing to engage in political activity and prior to any such activity.

If you have any questions regarding this matter, please contact [name deleted] by

¹ Section 5.304(d) of the implementing regulations for FARA provides that this exemption “shall not be available to any person ... if he engages in political activities as defined in Section 1(o) of the Act for or in the interests of his foreign principal.”

² The Act defines “political activity” as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States 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 country.” 22 U.S.C. § 611(o).

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telephone at (202) 233-0776.

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit