



**U.S. Department of Justice**

National Security Division

*Counterintelligence and Export Control Section*

*Washington, DC 20530*

March 10, 2021

**Via FedEx and E-mail**

[Addressee deleted]

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

Dear Mr. [name redacted]:

This is in reference to your letter of November 19, 2020 (“the November 19 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the possible obligation of your client, [Advisory 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, as well as additional information you provided at our request in your letter dated December 31, 2020 (“the December 31 Letter”), we have determined that [Advisory Firm A] is obligated to register under FARA for the proposed activities on behalf of the government of the [foreign country] as described in your submission.

In the November 19 Letter, you informed us that [Advisory Firm A] is an Advisory firm based in [location redacted] that provides business advisory, strategic government affairs, and strategy services to its clients. You further informed us that, on November 9, 2020, [Advisory Firm A] entered into a consulting agreement (“agreement”) with [Advisory Firm B], a [location redacted] strategic advice and Advisory firm and current FARA registrant. [Advisory Firm B] is registered under FARA for its efforts to foster a positive relationship between the United States and the [foreign government] pursuant to its contract with the [Office of the President of foreign government]. Pursuant to its agreement with [Advisory Firm B], [Advisory Firm A] will provide two types of services: (1) “services related to [Advisory Firm B’s] activities to positively impact relations between the [foreign Government] and the United States,” and (2) “contacting and meeting with private industry leaders to present commercial opportunities within the [foreign country].” [Advisory Firm A] proposes to engage two separate teams of employees to carry out each of these services and will undertake reasonable efforts to prevent “substantive overlap” between individual members of the two teams.

[Advisory Firm A] proposes that the team providing the first service will file a primary registration under FARA and the members of this team will file short form registrations because they are engaged in policy-related representation of the foreign principal. You request a determination as to whether the team engaging in the second set of proposed activities qualifies for the exemption set forth in Section 613(d)(1) of the Act, which exempts from registration

“private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal.”

Generally speaking, save certain exemptions, a party is an “agent of a foreign principal” that 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, in pertinent part:

(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;

*See* 22 U.S.C. § 611(c)(1).

The [foreign government] is a “foreign principal” as defined by the Act, 22 U.S.C. § 611(b)(1). If [Advisory Firm A] pursuant to the agreement with [Advisory Firm B] on behalf of the [foreign government], 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 concur with your assessment that the [Advisory Firm A] team engaging in the first set of services, that you characterized as policy-related representation of the foreign principal, will require registration under FARA because [Advisory Firm A] will be engaging in “political activities” on behalf of the [foreign government].<sup>1</sup>

As concerns the second set of activities, [Advisory Firm A] proposes that the team will confine its activities to “private, commercial activities, including market analysis, industry growth strategies, and other related assistance to [foreign government] officials and private sector enterprises in the country.” You indicated that these activities are intended for “industry leaders in the United States” and the rest of the North American region with the purpose of “identify[ing] business opportunities relating to the growth and expansion of specific industry sectors in the [foreign country] . . . including telecommunication and information technology, manufacturing, infrastructure and film production services.” In your December 31 Letter, you provided a list of more than 40 U.S. entities that maintain manufacturing facilities in [another foreign country] with a view toward [Advisory Firm A] approaching such entities to establish “[redacted] facilities, supply hubs, and other regional economic developments” in the [foreign country].

For this second set of proposed activities, we have determined that [Advisory Firm A] would be engaging in political activities. We make this determination because [Advisory Firm A] would be intending to influence a section of the U.S. public – namely, U.S. companies –

<sup>1</sup>With 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).

[Addressee deleted]

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respect to the public interests of the [foreign country's] economic sector writ large (as opposed to with respect to a specific company or transaction). More specifically, in seeking to advance the economic interests of the [foreign country] by "contacting and meeting with private industry leaders to present commercial opportunities within the [foreign country]" [Advisory Firm A] would be advancing the political interests of the government of the [foreign country]. In addition, [Advisory Firm A] proposes to engage in furnishing, disseminating and publishing information and materials concerning "private, commercial activities, including market analysis, industry growth strategies, and other related assistance to [foreign government] officials and private sector enterprises in the country," in its efforts to promote economic development in the [foreign country]. Thus, [Advisory Firm A] would be acting as an "information-service employee" as defined in Section 611(c)(1)(ii), because it would be "furnishing, disseminating or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country."

Accordingly, [Advisory Firm A] does not qualify for the exemption set forth in Section 613(d)(1) because we have determined that [Advisory Firm A's] activities are political in nature in that they would be introducing U.S. entities to [foreign country] business leaders to promote opportunities to invest in the economic development of the [foreign country]. Although you represent that the commercial exemption should apply because [Advisory Firm A] will only be approaching private, commercial entities, such entities are a "section of the public within the United States," thereby bringing the activity described squarely within the definition of "political activities." Please note that any person who engages directly in activity in furtherance of the interests of the foreign principal is required to file a short form registration in accordance with 28 C.F.R. §5.202(d).

Please effectuate the registration of [Advisory Firm A] within the next thirty (30) days. If you have any questions regarding this matter, please contact [name redacted] by telephone at (202) 233-0776.

Sincerely,

*/s/ Jennifer Kennedy Gellie*

Jennifer Kennedy Gellie  
Chief, FARA Unit