



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 28, 2024

Via E-mail

[Requestor's Name and Contact Information]

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

Dear [Requestor]:

We write in response to your August 16, 2024, letter ("the August Letter"), which you supplemented on September 28, 2024 ("the September Letter"), requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) on whether your client, [U.S. Company], must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain activities it may perform on behalf of [Foreign Company]. Based on the representations in the Letters, and for the reasons discussed below, [U.S. Company] would be obligated to register for its proposed activities.

I. Factual Background

According to the August Letter, [Foreign Company] is a broadcasting and media organization owned by the [Foreign Country] government that is registered and located in [Foreign Country].¹ The management of [Foreign Company] is overseen by the [Foreign Entity], which consists of seven members appointed by the [Foreign Country] Prime Minister and "[Redacted]."²

According to the website of the [Foreign Government Office] for the [Foreign Country] government, [Foreign Company] has been a platform through which the [Foreign Country] government has sought to engage with members of the [Foreign Country] diaspora to advance the strategic and policy goals of the [Foreign Country] government.³ Specifically, the [Foreign Country] government's website notes that the [Foreign Government Office's] work has "strategically focused" on the following areas:

[Redacted].⁴

¹ Aug. Letter at 1-2.

² [Website Citation].

³ [Website Citations].

⁴ [Website Citation].

According to the August Letter, [U.S. Company] is a “media company” based in [U.S. Location], that was founded and is wholly owned by [Foreign Company].⁵ The August Letter explains that [U.S. Company] is managed by its Chief Executive Officer, who is a U.S. citizen and responsible for [U.S. Company’s] daily activities, and a Board of Directors comprised of three [Foreign Company] employees who are responsible for [U.S. Company’s] “general management.”⁶ It further explains that [U.S. Company] broadcasts television content and solicits advertisements in the United States.⁷

The September Letter explains that [U.S. Company] intends to produce and broadcast television programming “tailored to its U.S. audience” in the categories of “[Foreign Country] Culture and Traditions,” “Educational Programs,” “Entertainment,” and “Diaspora Stories.”⁸ According to the September Letter, the “[Foreign Country] Culture and Traditions” programs will “showcase traditional [Foreign Country] arts, crafts, culinary traditions music, and historical heritage” to “reflect[] [Foreign Country] culture and history to the diaspora, fostering cultural pride and awareness,” the “Educational Programs” will involve “interviews with notable figures from various fields, including educators, artists, and cultural historians” to “promot[e] [Foreign Country] culture and education,” the “Entertainment” programs will consist of “live performances, theater productions, music concerts, and documentaries” to “strengthen cultural ties between [Foreign Country] and the [Foreign Country] diaspora in the [United States],” and the “Diaspora Stories” programs will be “segments that focus on experiences of [Foreign Country]-Americans living in the United States” to “encourage positive cultural connections between viewers.”⁹

In addition, the August and September Letters indicate that [U.S. Company] plans to engage U.S.-based advertisers to sell advertising space on [Foreign Company’s] channel within the U.S. market.¹⁰ A copy of a draft cooperation agreement between [Foreign Company] and [U.S. Company] (the “Cooperation Contract”) was provided with the August Letter.¹¹ According to the Cooperation Contract, [U.S. Company] may “negotiate with customers on its own behalf and at the expense of [Foreign Company]” and “place its advertisements in the [U.S. Company] TV

⁵ Aug. Letter at 1.

⁶ *Id.* at 2.

⁷ *Id.* at 1.

⁸ Sept. Letter at 3.

⁹ *Id.*

¹⁰ *Id.* at 1-2; Aug. Letter at 2, 5. The August Letter adds that “[U.S. Company] has not commenced its activities” and has only taken “preparatory steps [that] include appointing a [Chief Executive Officer], electing board members, opening a bank account, and renting office space.” Aug. Letter at 2.

¹¹ In addition to the Cooperation Contract, a copy of a “service agreement,” “commercial sublease agreement,” “loan agreement,” “CEO agreement,” and an “advertisement contract” regarding [U.S. Company] were provided with your advisory opinion request. Aug. Letter at 3-5; Sept. Letter at 2.

program[ming] owned by [Foreign Company].”¹² The Cooperation Contract further states that [U.S. Company] must “[c]onduct negotiations with clients exclusively under the terms provided by [Foreign Company]” and “[p]rovide [Foreign Company] with necessary information regarding the course and result of negotiations.”¹³ It also explains that [U.S. Company] must obtain [Foreign Company’s] consent on, among other things, the subject and price relating to advertising sales and must advise [Foreign Company] “on the advertising market at the request of [Foreign Company], perform price increases[,] . . . and present [that] information to other persons.”¹⁴ The Cooperation Contract further specifies that [U.S. Company] must transfer 50% of the amount it receives in advertising sales to [Foreign Company].¹⁵

According to the Cooperation Contract, [U.S. Company’s] activities to develop, promote, and distribute television programming must be in accordance with terms of cooperation that [U.S. Company] and [Foreign Company] will later agree to, define, and attach in an “Appendix” to the Cooperation Contract once content development begins.¹⁶ According to the September Letter, “[U.S. Company] will maintain full creative and editorial control over the programming it produces, ensuring that it aligns with the cultural and entertainment needs of the U.S.-based [Foreign Country] community,” and “[Foreign Company’s] role will be limited to providing technical support and creative guidance when needed.”¹⁷ The September Letter further represents that “no political programming or governmental messages is intended to be included in the content” and that content’s “focus will remain on non-political, cultural, and educational programming.”¹⁸

In addition, the August Letter notes that “[Foreign Company] has extended a loan agreement to [U.S. Company] allowing for the disbursement of up to \$65,000 [to [U.S. Company]] to support its initial setup and operations” and that [U.S. Company] “must repay the [loan’s] principal and interest within 30 days following the [loan] term’s expiration.”¹⁹ According to the Cooperation Contract, [Foreign Company] may unilaterally terminate the parties’ agreement, while [U.S.

¹² Cooperation Contract at 1 (paragraph 1.1.).

¹³ *Id.* at 3 (paragraphs 3.1.5. and 3.1.6.). The Cooperation Contract adds that [Foreign Company] must “[p]rovide [U.S. Company] with the necessary information for negotiations with clients” and that [U.S. Company] must “not disclose or reveal in any form to other persons the transactions of [Foreign Company] and the content thereof involved through the mediation of [Foreign Company].” *Id.* at 2-3 (paragraphs 2.1.1. and 3.1.7.).

¹⁴ *Id.* at 1-2 (paragraphs 1.1.1. and 3.1.1.).

¹⁵ *Id.* at 4-5 (paragraph 4.1).

¹⁶ Cooperation Contract at 1-2 (paragraphs 1.2. and 1.3.). The September Letter explains that the Appendix “has not [yet] been drafted or finalized.” Sept. Letter at 2.

¹⁷ Sept. Letter at 3.

¹⁸ *Id.*

¹⁹ Aug. Letter at 3-4. A copy of the loan agreement was provided with the August Letter. *Id.*

Company] may terminate it only if [Foreign Company] “fails to fulfill or improperly fulfills” its contractual obligations.²⁰

The September Letter states that “[U.S. Company] does not intend to engage in any dissemination of information about [Foreign Country] or its government through its advertising operations.”²¹ In addition, the August Letter explains that [U.S. Company] has not engaged in and does not intend to engage in “any direct communication or meetings with U.S. government officials” and “will not engage in any political activities, lobbying, or representation of foreign interests to U.S. government officials or agencies.”²² The August Letter further explains that [U.S. Company] “does not provide and has not provided any public relations counseling to [Foreign Company] or any other foreign principal” and that “[U.S. Company] has not provided and does not plan to provide consulting services to any foreign principal.”²³

The August Letter argues that [U.S. Company’s] proposed activities “fall[] under the commercial activities exemption under 22 U.S.C. § 613(d)(1)” of FARA.²⁴ It asserts that [U.S. Company’s] proposed activities are “entirely commercial in nature,” that [U.S. Company] “operates as a separate legal entity within the United States, exercising independent control over its advertising content,” and that [Foreign Company] “does not have direct control or direction over [U.S. Company’s] day-to-day operations or decision-making processes . . . [or] the form or content of the advertisements being obtained by [U.S. Company].”²⁵ Further, the August Letter states that “[U.S. Company’s] sourcing and selection of advertisements is not directed or controlled by [Foreign Company]” and that [U.S. Company’s] measures “to exclude political advertisements and . . . ensure that all advertisements comply with U.S. law” would “mitigate the likelihood that [U.S. Company’s] activities could in the future be construed as political propaganda.”²⁶

You have requested an advisory opinion on whether [U.S. Company’s] proposed activities require registration.

²⁰ Cooperation Contract at 2-3 (paragraphs 2.2.3. and 3.2.2.).

²¹ Sept. Letter at 1.

²² Aug. Letter at 2, 5.

²³ *Id.* at 6.

²⁴ *Id.* at 5.

²⁵ *Id.*

²⁶ *Id.*

II. FARA Analysis

FARA's purpose is to require public disclosure by persons engaging in certain activities for or on behalf foreign principals so that the U.S. government and the people of the United States may evaluate those activities considering such persons' function as foreign agents.²⁷

FARA defines a "foreign principal" as, among other things, "a government of a foreign country"²⁸ and "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."²⁹ Here, the [Foreign Country] government and [Foreign Company], which, as indicated above, was organized under the laws of and whose principal place of business is in [Foreign Country], are "foreign principals" within the meaning of FARA.

The term "agent of a foreign principal" under FARA, in relevant part, means:

- (1) [A]ny person³⁰ who acts as an agent, representative, employee, or servant, or who acts in any other 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 –
 - (i) engages within the United States in political activities for or in the interests of such foreign principal;
 - (ii) acts within the United States as a . . . publicity agent [or an] information-service employee . . . for or in the interests of such foreign principal; [or]
 - (iii) 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 . . .³¹

²⁷ See *Meese v. Keene*, 481 U.S. 465, 469 (1987) (discussing FARA's legislative history); *About, Foreign Agents Registration Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/nsd-fara> (last visited Oct. 28, 2024).

²⁸ 22 U.S.C. § 611(b)(1).

²⁹ 22 U.S.C. § 611(b)(3).

³⁰ FARA defines a "person" to include partnerships, associations, corporations, organizations, or other combinations of individuals. See 22 U.S.C. § 611(a).

³¹ 22 U.S.C. § 611(c)(1)(i)-(iii).

FARA's implementing regulations explain that the meaning of "control" as used in FARA includes "the possession or the exercise of the power, directly or indirectly, to determine the . . . activities of a person . . . by contract, or otherwise."³²

FARA defines the term "political activities" to include

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 or a foreign political party.^[33]

FARA also defines the term "publicity agent" as

any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise[.]³⁴

Finally, FARA defines the term "information-service employee" as

any person who is engaged in 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 or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country[.]³⁵

FARA's "agency" determination, therefore, is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal's interests.

Although [U.S. Company] contends that it operates independently from [Foreign Company], [U.S. Company] would have an agency relationship with [Foreign Company] under FARA because it

³² 28 C.F.R. § 5.100(b).

³³ 22 U.S.C. § 611(o).

³⁴ 22 U.S.C. § 611(h).

³⁵ 22 U.S.C. § 611(i).

would be acting pursuant to its contractual agreements with [Foreign Company].³⁶ As described above, [U.S. Company] would be established for the purpose of serving [Foreign Company], and would receive a loan of up to \$65,000 from [Foreign Company] to pay its initial setup and operating costs.³⁷ It would also coordinate with [Foreign Company] to produce and broadcast television programming on [Foreign Country] culture, education, entertainment, and diaspora issues directed at the [Foreign Country] community in the United States.³⁸

Those activities are registrable under FARA for multiple reasons. First, while [U.S. Company] disavows that it would be engaging in political activities, lobbying, communicating with U.S. government officials or agencies, or disseminating information about [Foreign Country] or its government, [U.S. Company] would nevertheless be performing “political activities” under FARA. As mentioned above, the [Foreign Country] government has sought to advance its strategic goals—which expressly include promoting repatriation and attracting direct investment in [Foreign Country]—through [Foreign Company], a state-owned enterprise.³⁹ [U.S. Company’s] proposed activities thus target “a section of the public within the United States with reference to . . . the political or public interests, policies, or relations of a government of a foreign country.”⁴⁰

Second, by engaging in such activity, [U.S. Company] would be acting as a “publicity agent” because it would be “publi[shing] or disseminat[ing] . . . oral, visual, graphic, written, or pictorial information or matter . . . by means of . . . broadcasts, . . . motion pictures, or otherwise.”⁴¹

Third, [U.S. Company] would be acting as an “information-service employee” 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 a foreign country.⁴²

Fourth, by receiving and using a loan from [Foreign Company] to pay its setup and operating costs, [U.S. Company] would be disbursing and dispensing “contributions, loans, money, or other things of value for or in the interest of such foreign principal.”⁴³

³⁶ 28 C.F.R. § 5.100(b) (defining “control” and its variants to include “the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person . . . *by contract*, or otherwise”) (emphasis added).

³⁷ Aug. Letter at 3-4.

³⁸ See *supra* notes 8-9, 16-17 and accompanying text.

³⁹ See *supra* notes 3-4 and accompanying text.

⁴⁰ 22 U.S.C. § 611(c)(1)(i), (o).

⁴¹ 22 U.S.C. § 611(c)(1)(ii), (h) (emphasis added).

⁴² 22 U.S.C. § 611(c)(1)(ii), (i).

⁴³ 22 U.S.C. § 611(c)(1)(iii) (emphasis added).

For these reasons, [U.S. Company] qualifies as an “agent of a foreign principal” under FARA and would be obligated to register for its proposed activities unless an exemption applies.

The August Letter argues that [U.S. Company] should be exempt from registration under Section 613(d)(1) of FARA. That Section exempts from registration “[a]ny person engaging or agreeing to engage only . . . in *private* and *nonpolitical* activities in furtherance of the bona fide trade or commerce of such foreign principal[.]”⁴⁴ In relevant part, FARA’s implementing regulations concerning Section 613(d) state:

[A]ctivities of an agent of a foreign principal . . . in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered ‘private,’ even though the foreign principal is owned or controlled by a foreign government, *so long as the activities do not directly promote the public or political interests of the foreign government[.]*”⁴⁵

“The burden of establishing the availability of an exemption,” according to FARA’s implementing regulations, “shall rest upon the person whose benefit the exemption is claimed.”⁴⁶

[U.S. Company] has not met its burden of establishing that the exemption at Section 613(d)(1) applies to its proposed conduct. As explained above, the [Foreign Country] government has used [Foreign Company] to further its strategic goals concerning the [Foreign Country] diaspora, which include promoting repatriation and attracting direct investment in [Foreign Country].⁴⁷ [U.S. Company] proposes to advance these goals by producing and broadcasting [Foreign Company] content directed at the U.S.-based [Foreign Country] community.⁴⁸ For these reasons, [U.S. Company’s] proposed activities would not be “private” because they would “directly promote the public or political interests” of the [Foreign Country] government, which is funding the endeavor through [Foreign Company]. Moreover, because [U.S. Company] would be engaging in political activities, as discussed above,⁴⁹ its proposed activities are not “nonpolitical.”

⁴⁴ 22 U.S.C. § 613(d)(1). FARA’s implementing regulations concerning Section 613(d) explain that the terms “trade” or “commerce” include “the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.” 28 C.F.R. § 5.304(a).

⁴⁵ 28 C.F.R. § 5.304(b) (emphasis added).

⁴⁶ 28 C.F.R. § 5.300.

⁴⁷ See *supra* notes 3-4 and accompanying text.

⁴⁸ See *supra* notes 8-9, 16-17 and accompanying text.

⁴⁹ See *supra* notes 39-40 and accompanying text.

Because [U.S. Company] would qualify as an “agent of a foreign principal” and would not be exempt from registration, it would be obligated to register for its proposed activities.⁵⁰ Therefore, please complete [U.S. Company’s] registration within 10 days of its agreement to act for [Foreign Company] and before [U.S. Company] performs any activities as an agent.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to FARA.Public@usdoj.gov or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

⁵⁰ Although you did not argue for its application, [U.S. Company’s] proposed activities also would not qualify for the exemption at Section 613(e), which exempts “[a]ny person engaging or agreeing to engage *only* in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.” 22 U.S.C. § 613(e) (emphasis added). While cultural content may be a component of [U.S. Company’s] planned broadcasts, the objectives of [U.S. Company’s] proposed activities extend beyond the categories listed in the exemption and include political activities, rendering the exemption inapplicable.