



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 2, 2024

Via Email

[Requestor]

[address]

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

Dear [Requestor]:

We write in response to your letter of October 4, 2024 ("October 4 Letter") requesting an advisory opinion pursuant to 28 C.F.R. § 5.2 on behalf of your client, [Company A], regarding registration obligations applicable to [Company A], majority owner [redacted], and [Company A]'s employees under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq. ("FARA" or "the Act"). After careful consideration of your request, the LLC agreement, and the additional information provided at our request,¹ and for the reasons stated below, we conclude that your client would not be required to register under the Act for the proposed activities.

1. Factual Background

According to the October 4 Letter, [Company A] is a [State] limited liability corporation that was formed to develop, produce, finance, and distribute feature-length motion pictures—including within the United States. [Company A] was established by [majority owner], a United States citizen who is domiciled in the United States and is currently an employee of the [foreign country]'s embassy in the United States (the "Embassy"), working in communications. Pursuant to U.S. law, [majority owner] is on record with the U.S. Department of State as an employee of the Embassy. [Majority owner] intends to resign from his position with the Embassy before [Company A]'s official launch to focus on his work for [Company A].²

The October 4 Letter discloses that [redacted], the [foreign country]'s Ambassador to the United States, [Ambassador] intends to become an investor in [Company A]. In return for his investment, [Ambassador] will receive a 20% membership interest in [Company A].³ [Majority Owner] will, for the time being, retain the remaining equity interest.⁴ The October 4 Letter informs us that

¹ October 30 Email Message to FARA Unit ("October 30 Email"), attaching the LLC Agreement for [Company A].

² October 4 Letter at page 2.

³ *Id.*

⁴ According to the October 4 Letter, [majority owner] anticipates that [Company A] may in the future accept a limited number of additional investors on similar terms as those offered to [Ambassador] [redacted]. You state that currently there are no additional investors but anticipate that any additional investors will be private citizens and/or private

[Ambassador]'s investment will provide the initial seed money for [Company A] and will be used to fund [Company A]'s operational costs. Each film that [Company A] develops, on the other hand, will be financed on a project-by-project basis. Project investors are not expected to hold equity in [Company A] and instead will receive a return on investment based on the success of any film they finance.

You represent that at this time, no foreign government, political party, or any official thereof is expected to fund any of [Company A]'s initial projects. Pursuant to the terms of [Company A]'s operating agreement, [Ambassador] shall have no voting rights or authority to act on behalf of or bind [Company A] regarding: (i) editorial matters or matters related to the content created by [Company A] or any affiliate or subsidiary thereof; (ii) practices, policies, or procedures related to data security; (iii) hiring or firing of any employee of [Company A] or any affiliate or subsidiary thereof; or (iv) matters related to compensation of [Company A] employees, including, without limitation, any award or grant of incentive units and the terms of any such award or grant to [Company A] employees.

As described in the October 4 Letter, and as provided in the terms of the operating agreement, all members of [Company A], including [Ambassador], must vote to approve the following actions of [Company A]: (i) amending or modifying [Company A]'s certificate of incorporation or operating agreement; (ii) making a material change to the nature of the business conducted by [Company A]; (iii) approving [Company A]'s budget or materially amending or deviating from the approved budget by more than 10%; (iv) issuing additional ownership interests or admitting additional members to [Company A]; (v) incurring debt, pledging or granting liens on any assets or guarantee, or assuming, endorsing, or otherwise becoming responsible for the obligations of any person; (vi) making any loan, advance, or capital contribution to any person; (vii) changing the accounting methods or policies of [Company A]; (viii) entering into, amending, waiving, or terminating any related party agreement other than the entry into a related party agreement that is on an arm's length basis and on terms no less favorable to [Company A] than those that could be obtained from an unaffiliated third party; (ix) settling any lawsuit, action, dispute, or other proceeding or otherwise assuming any liability or agreeing to the provision of any equitable relief by [Company A]; (x) initiating or consummating an initial public offering or making a public offering and sale of [Company A]'s equity or any other securities; and (xi) dissolving, winding-up or liquidating [Company A] or initiating a bankruptcy proceeding involving [Company A].⁵

The October 4 Letter represents that [Ambassador]'s minority stake in [Company A] will not entitle him to direct, control, or manage any aspect of [Company A]'s specific activities, nor will he be afforded informal control over [Company A] or its employees.⁶ [Ambassador] will not serve

entities. There are currently no plans to solicit or accept future investments in [Company A] from foreign governments, foreign political parties, or any officials of foreign governments or foreign political parties. If this changes in the future, you state that [Company A] will seek additional guidance from the FARA Unit regarding any impact of such changes on the present analysis. October 4 Letter at page 2.

⁵ October 4 Letter at page 3; Section 7.02 of the Operating Agreement, pages 22-23.

⁶ October 4 Letter at pages 3-4.

on any [Company A] board or act as an officer of [Company A]. Other than the approval requirements listed in the preceding paragraph, [Ambassador]’s role will be limited to a passive financial stake in [Company A]. In this capacity, he will receive regular informational updates on his investment, [Company A]’s overall financial condition, and the status of current projects. [Ambassador] will not be permitted to provide advice, offer opinions, or exercise any decision-making authority regarding [Company A]’s business activities or projects. [Ambassador] will not receive updates on the day-to-day operations of [Company A].⁷

The October 4 Letter further represents that after [Ambassador] acquires a stake in [Company A], [Majority Owner] will continue to maintain sole operational control and oversee the day-to-day management of [Company A] as its chief executive officer and as its chief content officer and will be responsible for selecting projects for [Company A] to pursue. [Company A] intends to develop a variety of feature films, including dramas, thrillers, and comedies, that explore a range of themes and topics. Its projects will not seek to promote [Ambassador]’s home country of [foreign country] or any interests of the country or its government. Rather, [Company A] aims to operate as a for-profit, commercial entertainment enterprise like well-known film studios. [Company A] may also partner with established U.S. film companies for various aspects of certain film productions. Approximately six film projects are currently in the early stages of development. [Company A] will initially focus on projects for the U.S. market but expects to distribute films internationally as well.⁸

You request an advisory opinion on whether the proposed activities would require [Company A], its employees, and [Majority Owner] to register under FARA.

II. FARA Analysis

One of FARA’s purposes is to inform the American public of certain activities performed in the United States by agents of foreign principals. FARA defines the term “foreign principal” to include “a government of a foreign country” and “a person outside of the United States.”⁹ Because [Ambassador] is an official of a foreign government, as well as a citizen of that foreign country, the United Arab Emirates, he would qualify as a foreign principal under the Act.

Under FARA, an “agent of a foreign principal” is defined to include:

(1) any person who acts . . . at the order, request, or under the direction or control,^[10]
of a foreign principal or of a person any of whose activities are directly or indirectly

⁷ *Id.*

⁸ *Id.* at page 4.

⁹ 22 U.S.C. § 611(b)(1)(2).

¹⁰ See 28 C.F.R. § 5.100(b) (“As used in the Act, the term *control* or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.”).

supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,” and who directly or through any other person . . .

(ii) acts within the United States as a public relations counsel, publicity agent,^[11] information-service employee or political consultant[[]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[.]^[12]

[Ambassador] qualifies as a foreign principal, and the terms of the operating agreement clearly provide that the [Ambassador], as a member of [Company A], can exercise significant direction and control over the company by voting to take any of the actions described above, including changing corporate documents and agreements, changing the nature of the business or its budget, adding additional owners or making any change to related party agreements, incurring debts, changing accounting methods, initiating public offerings or the sale of equities or securities, settling lawsuits, and dissolving the corporation or initiating a bankruptcy proceeding.

The October 4 Letter informs us that [Ambassador] intends to invest \$200,000 in [Company A] in exchange for a 20% membership interest [200 Class A Units] in the company.¹³ [Majority Owner] will, for the time being, retain the remaining equity interest. The October 4 Letter informs us that [Ambassador]’s investment will provide the initial seed money for [Company A] and will be used to fund the company’s operational costs.¹⁴ This activity of [Company A] and [Majority Owner] soliciting and collecting of the investment funds from [Ambassador], and the disbursing and dispensing of such funds for operating expenses constitutes “solicit[ing], collect[ing], disburs[ing], or dispens[ing] contributions, loans, money, or other things of value for or in the interest of such foreign principal.”¹⁵ Such activity for the foreign principal would require registration under the Act absent an exemption.

In addition, the October 4 Letter informs us that [Company A]’s activity will involve developing a variety of feature films, including dramas, thrillers, and comedies, that explore a range of themes and topics. By directly publishing and disseminating motion pictures, [Company A] and [Majority

¹¹ The term “publicity agent” includes “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.” 22 U.S.C. § 611(h).

¹² 22 U.S.C. § 611(c)(1)(i)-(iv).

¹³ October 4 Letter at page 2, *See also* [Company A] LLC Agreement dated October 8, 2024, at Schedule A.

¹⁴ October 4 Letter at page 2.

¹⁵ 22 U.S.C. § 611(c)(1)(iii).

Owner] would be acting as a “publicity agent,”¹⁶ in that they would be “engaging directly or indirectly in the publication and dissemination of oral, visual, graphic, written, or pictorial information, including publication by means of . . . broadcasts and motion pictures.” Thus, [Company A] and [Majority Owner] would be required to register under FARA absent an exception.

We consider your assertion that [Company A] and [Majority Owner] qualify for the exemption under FARA for “private and nonpolitical activities” that are “in furtherance of the bona fide trade or commerce of [the] foreign principal.”¹⁷ [Company A] intends to operate as a for-profit, commercial entertainment enterprise like well-known film studios. The regulations implementing FARA define the term “trade or commerce” to “include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.”¹⁸ Concerning [Company A]’s activities, [Majority Owner] makes the following representations:

- (1) No foreign government, political party, or any official thereof is expected to fund any of [Company A]’s initial projects;
- (2) [Company A] may in the future accept a limited number of additional investors on similar terms as those offered to [Ambassador];
- (3) Currently there are no additional investors and that it is anticipated that any additional investors will be private citizens and/or private entities;
- (4) There are currently no plans to solicit or accept future investments in [Company A] from foreign governments, foreign political parties, or any officials of foreign governments or foreign political parties;¹⁹ and
- (5) [Company A]’s projects will not seek to promote [Ambassador]’s home country of [foreign country] or any interests of the country or its government.²⁰

If any of these representations change in the future, you represent that [Majority Owner] and [Company A] will seek additional guidance from the FARA Unit regarding the impact of such change, if any, on the present analysis.²¹

Based on the foregoing representations, as well as the nature and scope of the intended activities described above, we do not contest your assertion that the activities of [Company A] and [Majority Owner] qualify for the commercial exemption pursuant to Section 613(d)(1) of the Act, and that registration therefore is not required.

¹⁶ See *supra* note 13.

¹⁷ 22 U.S.C. § 613(d)(1).

¹⁸ 28 C.F.R. § 5.304(a).

¹⁹ October 4 Letter at page 2; October 30 Email.

²⁰ October 4 Letter at page 4.

²¹ *Id.*

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Please further note that any change in the facts and circumstances you relayed to us may change your status and you could be required to register. If any such change does occur, please contact us immediately. The present advisory opinion is expressly limited to the facts and conclusions stated herein.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by email 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