U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

April 14, 2025

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 March 10, 2025, letter ("Letter"), which we received on March 12, 2025, requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) on whether your firm, [U.S. Firm], must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. §§ 611-21, for certain activities it has agreed to perform on behalf of [Foreign Company]. Based on the representations in the Letter and its supporting documentation, and for the reasons discussed below, [U.S. Firm] must register for its proposed activities.

I. Factual Background

As the Letter states, [U.S. Firm] is a company located in [State] that helps "claimants in complex international disputes . . . recover judgments, arbitral awards, and other claims for money."[1] [Foreign Company] is a [Foreign City]-based firm organized under the laws of [Foreign Country] that provides global financial investigative services.[2]

The Letter indicates that the [Foreign Government 1], through its [Foreign Office], and the [Foreign Government 2], through the [Foreign Office], each contracted with [Foreign Company] (respectively, the "[Foreign Government Contract 1]" and "[Foreign Government Contract 2]") to receive "asset recovery services" from [Foreign Company].[3] According to copies of [Foreign Government Contracts 1 and 2] that were attached to the Letter, [Foreign Company] must pursue asset repayment claims it receives from the [Foreign Governments 1 and 2] against third parties through, among other things, multi-jurisdictional asset tracing and litigation.[4] [Foreign Government Contracts 1 and 2] stipulate that [Foreign Company] must recover assets that include

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[1] Letter at 1.

[2] *See* Letter at 1-2; [Website Citation]. The Letter indicates that [Foreign Company] also has a U.S. branch registered in [State]. Letter at 2.

[3] Letter at 1, 3.

[4] [Foreign Government Contract 1] at 1-4; [Foreign Government Contract 2] at 1-3, 5.

"real estate properties; . . . intangible assets of any kind; moveable properties such as cars . . . airplanes . . . [and] boats . . .; financial assets including bank accounts, investments, gold and cash; and any other asset or item . . . with any financial value or potential financial values."[5] In addition, they require [Foreign Company] to provide reports on its asset recovery efforts to [Foreign Governments 1 and 2] and specify that those governments will pay a percentage of recovered asset values to [Foreign Company] as compensation for its services.[6]

According to the Letter, [Foreign Company] has hired [U.S. Firm] as a "subcontractor" to "support litigation to recover stolen funds and assets in the United States on behalf of [Foreign Governments 1 and 2]."[7] "The stolen funds and assets in question," the Letter explains, "have an estimated value of $[Amount] and have been brought into the United States illegally by concealing the origin of money obtained from illicit activities, such as Kleptocracy and corruption."[8] Further, the Letter states that [U.S. Firm] will, among other things, obtain and share evidence "with federal, state, and local law enforcement agencies, and prosecutorial services, and inform the Department of Justice and the Department of the Treasury of [its] findings . . . to enable lawyers to file civil or criminal charges."[9]

A copy of the Contractor & Partnership Agreement (the "Agreement") between [Foreign Company] and [U.S. Firm] was attached to the Letter. The Agreement states that [U.S. Firm] will provide "infrastructure, strategic advisory and operational support to [Foreign Company] for the sole purpose of recovering overseas assets claimed by foreign government and states entities."[10] Further, the Agreement states that [U.S. Firm's] work will include "[s]eek[ing] additional U.S. Government funding by identifying and submitting relevant cases for asset seizures."[11]

The Letter states that [U.S. Firm] has not yet performed any activity under the Agreement and is "currently assisting [its] client [Foreign Company] in setting up a U.S.-based entity and operations and onboarding investors to finance an asset recovery effort."[12] In a copy of a [Foreign Company] strategic investor presentation about [Foreign Government Contracts 1 and 2] that was attached the Letter, [Foreign Company] provides reasons for "sovereign asset recovery" including that

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[5] [Foreign Government Contract 1] at 3; [Foreign Government Contract 2] at 3.

[6] [Foreign Government Contract 1] at 5, 7-8; [Foreign Government Contract 2] at 6-9.

[7] Letter at 2.

[8] *Id*.

[9] *Id*. at 4.

[10] Agreement § 1.

[11] *Id*. § 2.3. The Agreement provides that [U.S. Firm] will receive from [Foreign Company] a 12% equity share in [Foreign Company], $30,000 monthly compensation, reimbursement of travel expenses, and per diem allowances for its work. *Id*. §§ 3.1-3.2.

[12] Letter at 1.

"[g]overnments and international bodies are legally obligated to recover stolen or misappropriated sovereign wealth" and that "[e]conomic downturns drive governments to offset budget deficits and rising public spending."[13]

The Letter argues that [U.S. Firm] would not be acting "as an agent, representative, employee, or servant, or otherwise acts at the order, request, or under the direction or control" of a foreign principal.[14] It notes that [U.S. Firm] has contracted "strictly with [Foreign Company]" and that [Foreign Company] alone will "instruct" [U.S. Firm] in all its activities.[15] Further, the Letter comments that [U.S. Firm] does not report to, communicate with, or take instructions from any foreign government, foreign governmental agency, or foreign state-owned entity.[16]

Additionally, the Letter contends that [U.S. Firm] would not be engaging in political activities in the United States, "such as intending to influence any U.S. Government official or the American public regarding U.S. domestic or foreign policy or the political or public interests of a foreign government or foreign political party."[17] The Letter also states that [U.S. Firm] does not act as a public relations counsel, publicity agent, information-service employee, or political consultant.[18] It further states that [U.S. Firm] does not solicit, collect, disburse, or dispense contributions, loans, money, or things of value within the United States or represent the interests of a foreign principal before U.S. government officials or agencies.[19]

Finally, the Letter posits that [U.S. Firm's] work is "purely commercial and has nothing in common with anyone's foreign national or political interests, whether to gain influence in the United States or any activity with a similar purpose."[20]

You have requested an advisory opinion on whether [U.S. Firm] is exempt from registration under 22 U.S.C. § 613(d)(2).[21]

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[13] [Website Citation].

[14] Letter at 3.

[15] *Id*. at 3-4.

[16] *Id*. at 3.

[17] *Id*. at 4.

[18] *Id*.

[19] Letter at 5. The Letter comments that [U.S. Firm] does not control bank accounts or handle or collect funds or assets. *Id*.

[20] *Id*. at 3.

[21] *Id*. at 1.

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.[22]

FARA defines a "foreign principal" as, among other things, "a government of a foreign country"[23] 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."[24] Accordingly, [Foreign Governments 1 and 2] and [Foreign Company], which, as indicated above, is a corporation organized under the laws of [Foreign Country] and is based in [Foreign Country], are "foreign principals" under FARA.

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

> (1) [A]ny person[25] 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 –
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> (i) engages within the United States in political activities for or in the interests of such foreign principal;
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> (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; or
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> (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.][26]

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[22] *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 Apr. 4, 2025).

[23] 22 U.S.C. § 611(b)(1).

[24] 22 U.S.C. § 611(b)(3).

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

[26] 22 U.S.C. § 611(c)(1)(i), (iii)-(iv).

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."[27]

In addition, 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.[28]

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.

In this case, [Foreign Company] possesses and could exercise the power, directly or indirectly, to determine [U.S. Firm's] activities due to its contract with [U.S. Firm].[29] Thus, as you acknowledge, [U.S. Firm] would be acting under [Foreign Company's] direction and control.[30] Moreover, [U.S. Firm] would also be acting under the direction and control "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," since [Foreign Company] is acting pursuant to its contracts with [Foreign Governments 1 and 2].[31] As described above, the activities that [U.S. Firm] would perform in the United States pursuant to its contractual arrangement with [Foreign Company] would be "for the sole purpose of recovering overseas assets claimed by" [Foreign Governments 1 and 2] and would include sharing evidence with U.S. government agencies to enable legal proceedings to recover assets and seeking U.S. government funding, as noted above.[32]

Such activities are registrable under FARA for multiple reasons.

First, sharing evidence with U.S. government agencies on behalf of [Foreign Company] to prompt such agencies to take legal action to recover allegedly stolen assets of [Foreign Governments 1 and 2] would constitute political activities because, contrary to [U.S. Firm's] claims, that activity

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[27] 28 C.F.R. § 5.100(b).

[28] 22 U.S.C. § 611(o).

[29] *See supra* notes 7-11 and accompanying text.

[30] *See* 28 C.F.R. § 5.100(b); *supra* note 15 and accompanying text.

[31] 22 U.S.C. § 611(c)(1).

[32] *See supra* note 7-11 and accompanying text.

is intended to influence U.S. government officials and agencies "with reference to the political or public interests, policies, or relations of a government of a foreign country."[33]

Second, by engaging in such activity, [U.S. Firm] would be representing the interests of [Foreign Company] before U.S. government agencies and officials, since, as noted above, [Foreign Company] stands to profit from the recovery of the purportedly stolen assets.[34]

And third, by seeking funding from the U.S. government and "onboarding investors to finance an asset recovery effort," [U.S. Firm] would be soliciting money or other things of value for or in the interest of [Foreign Company].[35]

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

As noted above, the Letter contends that [U.S. Firm] should be exempt from registration under Section 613(d)(2) of FARA. That Section exempts from registration "[a]ny person engaging or agreeing to engage only . . . in other activities not serving predominantly a foreign interest[.]"[36] FARA's implementing regulations concerning Section 613(d)(2) state, in relevant part:

> [A] person engaged in political activities on behalf of a foreign corporation . . . will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government . . . *and the political activities do not directly promote the public or political interests of a foreign government*[.]"[37]

FARA's implementing regulations add that "[t]he burden of establishing the availability of an exemption from registration . . . shall rest upon the person whose benefit the exemption is claimed."[38]

Here, [U.S. Firm] has not met its burden of establishing that its proposed activities would "not serv[e] predominantly a foreign interest."[39] First, the proposed activities would serve the interests of [Foreign Company] and [Foreign Governments 1 and 2], all of which are foreign entities.

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[33] 22 U.S.C. § 611(c)(1)(i), (o); *see supra* notes 7-11 and accompanying text.

[34] 22 U.S.C. § 611(c)(1)(iv); *see supra* note 6 and accompanying text.

[35] 22 U.S.C. § 611(c)(1)(iii); *see supra* note 11-12 and accompanying text.

[36] 22 U.S.C. § 613(d)(2).

[37] 28 C.F.R. § 5.304(c) (emphasis added).

[38] 28 C.F.R. § 5.300.

[39] 22 U.S.C. § 613(d)(2).

Second, as [Foreign Company] explained to its potential investors, the recovery of stolen monetary and non-monetary assets would enable [Foreign Governments 1 and 2] to fulfill their legal obligations to recover stolen or misappropriated sovereign wealth and allow those governments to offsets budget deficits and public spending.[40] Thus, while [U.S. Firm's] political activities would be in furtherance of [Foreign Company's] commercial operations, they would directly promote the public and political interests of foreign governments.[41] The exemption at Section 613(d)(2), accordingly, would be inapplicable in this matter.

Because [U.S. Firm] qualifies as an "agent of a foreign principal" and is not exempt from registration, it must register for its proposed activities.[42] Therefore, please complete [U.S. Firm's] registration before [U.S. Firm] performs any activities as an agent.

In addition, given that [Foreign Government Contracts 1 and 2] each entitle [Foreign Company] to a "success fee" equal to a specified percentage of any recovered amount,[43] and that the [U.S. Firm]-[Foreign Company] contract contemplates [U.S. Firm] receiving an equity stake in [Foreign Company],[44] we note that FARA specifies,

> It shall be unlawful for any agent of a foreign principal required to register under this subchapter to be a party to any contract, agreement, or understanding, either express or implied, with such foreign principal pursuant to which the amount or payment of the compensation, fee, or other remuneration of such agent is contingent in whole or in part upon the success of any political activities carried on by such agent.[45]

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[40] *See supra* note 13 and accompanying text.

[41] *See* 28 C.F.R. § 5.304(c).

[42] Although you did not argue for its application, [U.S. Firm's] proposed activities also would not qualify for the exemption at Section 613(d)(1) of FARA, which exempts "[a]ny person engaging or agreeing to engage *only* . . . in private and nonpolitical activities in furtherance of bona fide trade or commerce of such foreign principal[,]" because, as explained above, [U.S. Firm] would be engaging in political activities. *See* 22 U.S.C. § 613(d)(1); *supra* note 33 and accompanying text.

[43] *See supra* note 6.

[44] Agreement § 3.1.

[45] 22 U.S.C. § 618(h).

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