



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 16, 2024

Via E-mail

[Requestors' Names and Contact Information]

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

Dear [Requestors]:

We write concerning your May 7, 2024, letter ("the May Letter"), which you supplemented by letters dated July 10, 2024, September 6, 2024, and September 12, 2024, (respectively, "the July Letter," "September 6 Letter," and "September 12 Letter"), requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), on whether your client, [U.S. Organization], must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain proposed activities in connection with [Foreign Organization]. Based on the representations in your letters and their supporting documentation, and for the reasons discussed below, we have determined that [U.S. Organization] would be obligated to register for its proposed activities.

I. Factual Background

The July Letter states that [U.S. Organization] is a non-profit organization with its principal place of business in [U.S. Location] whose purpose is to "[Redacted]." ¹ It further states that [U.S. Organization] annually hosts "[a Conference]." ²

According to the July Letter, [Foreign Organization] is a non-profit "research institute" based in [Foreign Country] that "[Redacted]" and "[Redacted]." ³ The July Letter further explains that the [Foreign Organization's] areas of research range from "[Redacted]." ⁴ In addition, the September 12 Letter notes that [Foreign Organization] is owned and managed by its Executive Director, [Individual], who is not a member of any foreign political party, and "is not owned, directed, and/or controlled by any foreign governments and/or any foreign political party." ⁵

¹ July Letter at 1.

² *Id.*

³ *Id.* at 2. [Foreign Organization's] legal name is [Redacted]. *Id.*

⁴ *Id.*

⁵ Sept. 12 Letter at 1. The September 12 Letter adds that [Foreign Organization] does not have a board or board members. *Id.*

According to the May and July Letters, [U.S. Organization] “anticipates” co-hosting a [Conference] in [Foreign Country] (“[Foreign Conference]”) that [Foreign Organization] wishes to sponsor.⁶ The May Letter states that “[p]oliticians, world leaders and political thinkers from various countries [would] speak at the event” and that “[n]either [U.S. Organization] nor [Foreign Organization] would prepare[] any of the speeches or talking points on behalf of [such] speakers.”⁷ In addition, the July Letter states that [Foreign Organization] would “focus its activities in Europe” and attaches a copy of a draft agreement letter from [U.S. Organization] to [Individual] (“the Proposed Agreement”).⁸

The Proposed Agreement describes [Foreign Conference] as a “joint effort” between [U.S. Organization] and [Foreign Organization] that would “bring success for both . . . organizations.”⁹ Further, it explains that [U.S. Organization] and [Foreign Organization] “share similar ideological views that value [Redacted]” and that co-hosting [Foreign Conference] would “continue to advance these values.”¹⁰ The Proposed Agreement adds that [Foreign Organization’s] “understanding of local history and culture [in Foreign Country], relationships with key speakers [and] the media, and the political dynamics in [Foreign Country] are . . . critical to our joint success” and “propose[s] a division of labor where [[U.S. Organization] and [Foreign Organization]] collaborate on [conference] topics and desired outcomes[.]”¹¹

Under the Proposed Agreement, [Foreign Organization] would have “the primary responsibilities of securing an appropriate venue, inviting non-US speakers and guests, and developing a media plan that is most effective in [Foreign Country] . . . in consultation with [U.S. Organization].”¹² It would also be responsible for paying for the following expenses:

- Conference venue, food and beverages;
- Local transportation for [U.S. Organization] staff and American guests while in the conference city and any sites of interest in which American guests will visit;
- Costs associated with non-U.S. media;
- Registration and promotion costs; and

⁶ May Letter at 1; July Letter at 2-3.

⁷ May Letter at 1.

⁸ July Letter at 2.

⁹ Proposed Agreement at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

- Audio-visual expenses.¹³

In addition, the Proposed Agreement states that [U.S. Organization] would “support [Foreign Organization’s] activities by identifying and inviting . . . American thought-leaders, journalists, and policy makers who may be interested in attending and participating . . . in consultation with the [Foreign Organization].”¹⁴ According to the July Letter, [U.S. Organization] would communicate with prospective American invitees in the United States.¹⁵ The Proposed Agreement and May Letter explain that [U.S. Organization] would license the use of [U.S. Organization’s] trademarked [Redacted] logo to [Foreign Organization] for [Foreign Organization] to promote the conference in return for a [Redacted] licensing fee payment.¹⁶ The May and July Letters add that the [U.S. Organization] would also license broadcasting rights to American-owned news stations and share clips of the conference through the [U.S. Organization’s] website and social media accounts.¹⁷ According to the Proposed Agreement, [U.S. Organization] would be responsible for paying the following expenses:

- Transportation from the U.S. to the conference city for [U.S. Organization] staff, board members, and supporters who receive an invitation from [U.S. Organization] to attend;
- Food and housing for all [U.S. Organization] staff and American guests and miscellaneous expenses incurred by [U.S. Organization] staff and American guests while on travel; and
- Transportation and housing costs associated with U.S. media.¹⁸

Additionally, the Proposed Agreement states that the “[c]osts and expenses related to travel of American policymakers and journalists [would] be allocated [between [U.S. Organization] and [Foreign Organization]] by mutual agreement.”¹⁹ It further states that “[d]ecisions over the

¹³ *Id.* at 3.

¹⁴ *Id.* at 1.

¹⁵ July Letter at 2.

¹⁶ Proposed Agreement at 2; May Letter at 1. You provided a copy of a draft trademark license agreement with the September 6 Letter.

¹⁷ May Letter at 2; July Letter at 2-3. The July Letter indicates that [Foreign Organization] would have no role in the [U.S. Organization’s] efforts to license broadcasting rights to American-owned news stations and broadcast clips of the conference through [U.S. Organization’s] website and social media accounts. July Letter at 3.

¹⁸ Proposed Agreement at 2-3.

¹⁹ *Id.* at 1-2.

[conference] agenda shall be made in concert by [[U.S. Organization] and [Foreign Organization]], particularly with respect to the guest list.”²⁰

The May Letter asserts that [U.S. Organization] “[would] not be acting at the order, request, or under the direction or control of [Foreign Organization]” and has “all final decision-making authority[.]”²¹

According to the July Letter, the conference video clips that [U.S. Organization] would share on its website and social media accounts would “not be directed or intended to influence any U.S. government agency or official or any section of the U.S. public” but would be meant “to highlight key aspects of political philosophy and various ideas by [Redacted] . . . for educational purposes on the values of [Redacted].”²²

You have asked us for an advisory opinion on whether [U.S. Organization] would be obligated to register for its above-referenced proposed activities in connection with [Foreign Organization].²³

II. FARA Analysis

FARA defines a “foreign principal” as, among other things, “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 Because [Foreign Organization] is an organization whose principal place of business is in [Foreign Country], it is a “foreign principal” within the meaning of FARA.²⁵

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

- (1) [A]ny person²⁶ 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

²⁰ *Id.* at 2.

²¹ May Letter at 1. The Proposed Agreement notes that the agreement “create[s] a principal-agent or employment relationship as defined by the laws of the United States” between [U.S. Organization] and [Foreign Organization]. Proposed Agreement at 3.

²² July Letter at 3.

²³ May Letter at 2.

²⁴ 22 U.S.C. § 611(b)(3).

²⁵ To the extent [Individual] is a person outside of the United States who is not a citizen of and domiciled within the United States, he would also be a “foreign principal” within the meaning of FARA. 22 U.S.C. § 611(b)(2).

²⁶ FARA defines the term “person” as “an individual, partnership, association, corporation, organization, or any other combination of individuals[.]” 22 U.S.C. § 611(a).

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 –

- (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[.]^[27]

FARA's implementing regulations state 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, whether . . . *by contract*, or otherwise"²⁸

FARA's "agency" determination is therefore 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.

Here, despite [U.S. Organization's] suggestion to the contrary, [U.S. Organization] would have an agency relationship with [Foreign Organization] under FARA because the Proposed Agreement obligates [U.S. Organization] to engage in FARA-registrable activity within the United States. As described above, the Proposed Agreement provides that [U.S. Organization] is responsible for paying travel costs and expenses for U.S. policymakers and media that it invites to attend [Foreign Conference].²⁹ Such activity would constitute "disburs[ing] or dispens[ing] . . . money, or other things of value for or in the interest of [a] foreign principal."³⁰ [U.S. Organization] thus qualifies as an "agent of a foreign principal" under FARA.³¹

Because [U.S. Organization] qualifies as an "agent of a foreign principal" and would not be otherwise exempt from registration, it would be obligated to register for its proposed activities in

²⁷ 22 U.S.C. § 611(c)(1)(iii).

²⁸ 28 C.F.R. § 5.100(b) (emphasis added).

²⁹ See *supra* notes 14, 18-19 and accompanying text.

³⁰ 22 U.S.C. § 611(c)(1)(iii).

³¹ As noted above, the May and July Letters state that [U.S. Organization] intends to license broadcasting rights to American-owned news stations and share [Foreign Conference] clips through [U.S. Organization's] website and social media accounts. If it were determined that these activities were intended to influence any section of the U.S. public concerning domestic or foreign policy, they would qualify as "political activities" under FARA and thus provide an additional basis for registration. See 22 U.S.C. § 611(c)(1)(i), (o).

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the United States.³² Therefore, if [U.S. Organization] agrees to engage in them, please complete [U.S. Organization's] registration within 10 days of such agreement and before engaging in such activities.

This advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of FARA and its regulations. If there are any changes in the facts and circumstances you related to us, you should contact us immediately.

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

³² Although you did not argue for its application, Section 613(d)(2) of FARA exempts “[a]ny person engaging or agreeing to engage only . . . in . . . activities not serving *predominantly* a foreign interest[.]” 22 U.S.C. § 613(d)(2) (emphasis added). According to FARA’s implementing regulations, “[t]he burden of establishing the availability of an exemption shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300. In this case, [U.S. Organization’s] proposed activities appear to predominantly serve foreign interests because they would facilitate a [Conference] occurring in [Foreign Country] that would directly advance [Foreign Organization’s] interests and provide a platform for foreign political speakers to espouse their views. *See supra* notes 6-7, 9-11 and accompanying text. Accordingly, the Section 613(d)(2) exemption would be unavailable to [U.S. Organization].