

DOJ's Recently Released Redacted Advisory Opinions Shed Light on the Foreign Agents Registration Act

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The Foreign Agents Registration Act (FARA), 22, U.S.C. 611 *et seq.*, is a disclosure statute that applies to all persons acting as an "agent of a foreign principal." FARA aims to ensure all such agents engaged in political or quasi-political activities disclose their activities, disbursements, receipts, and relationships with foreign principals to the U.S. government. Under FARA, agents must register with the U.S. Department of Justice (DOJ) within 10 days of becoming, or agreeing to become, an agent of a foreign principal unless an exemption applies. Persons seeking an exemption may submit an advisory opinion request to the National Security Division of the DOJ.

Until recently, agency responses to advisory opinion requests were confidential (note that the requests themselves remain confidential). On June 8, 2018, the DOJ released over 50 redacted FARA advisory opinions addressing common exemptions. A full list of the advisory opinions is available [here](#). Summaries of select advisory opinions addressing agency as well as the commerce, legal, and Lobbying Disclosure Act (LDA) exemptions are provided below:

- **Definition of Agency:** In response to a recent advisory opinion request, the DOJ concluded that a commentator hosting a television show that was produced by a U.S. production company registered under FARA (because it was producing programming for a foreign state-owned network) was not required to separately register under FARA given the lack of an independent contractual relationship between the commentator and the foreign state-owned network. As the DOJ explained, "[The commentator]'s contractual relationship is with

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[the U.S. production company], a FARA-registered U.S. entity. Therefore, it cannot be said that the [commentator] is an 'agent of a foreign principal' who is acting 'at the order, request, or under the direction or control of a foreign principal.'"

- **Commerce Exemption:** A U.S. company providing compliance and consulting services to a foreign state bank submitted an advisory opinion request seeking confirmation that FARA's commerce exemption at 22 U.S.C. § 613(d) applied. The company characterized its services for the bank as private and non-political, claiming that its services do not serve a foreign interest. The DOJ disagreed, however. Specifically, the DOJ concluded that the U.S. company did not qualify for the commerce exemption because the company's activities were intended to demonstrate the bank's fitness to establish relationships with U.S. financial institutions, thereby directly promoting the public interests of the foreign country and disqualifying the agent from the commerce exemption.
- **Legal Exemption:** A U.S. law firm submitted an advisory opinion request claiming that the legal exemption at 22 U.S.C § 613(g) applied to its representation of a foreign person and foreign bank. The DOJ agreed, noting that the law firm's activities were limited to the provision of legal services to the foreign person and foreign bank in the context of a U.S. sanctions-related investigation and enforcement proceeding and were not intended to influence U.S. sanction policies beyond the law firm's representation of the foreign person and foreign bank, which would have disqualified the firm from the exemption.
- **LDA Exemption:** A U.S. law firm representing a foreign bank submitted an advisory opinion request claiming the LDA Exemption 22 U.S.C. § 613(h) applied. As part of its representation of the foreign bank, the law firm intended to lobby Congress, special interest groups, and the public. The DOJ concluded that the law firm could not avail itself of the LDA exemption because the foreign bank was part of the government, making the foreign government the principal beneficiary of the law firm's efforts. As the DOJ noted, the LDA exemption does not apply where, as here, a foreign government is the principal beneficiary of an agent's activities. See 18 C.F.R. § 5.307.

While the DOJ's advisory opinions shed some light on its application and interpretation of the FARA statute and, in particular, its exemptions to FARA registration, they also reinforce the heavily fact-specific nature of FARA registration obligation determinations. Indeed, one small change in a fact pattern can give rise to a completely different conclusion as to whether registration is required under FARA. Given that considerable gray areas exist, we would recommend seeking counsel for specific advice on FARA registration obligations and exemptions.