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The Foreign Agents Registration Act (FARA), once a little-known law even within the DC Beltway, has gained a renewed focus as several charges against high-profile individuals have thrust the law into the spotlight. In this regard, the U.S. Department of Justice (DOJ) has begun taking a stronger stance on compliance and notable bipartisan efforts have been made in Congress to address certain perceived “loopholes” and to increase the DOJ’s enforcement capabilities.

It is widely recognized that we are currently in a new FARA enforcement era, which potentially entails significant risks for individuals engaged in certain political (or quasi-political) activities for non-US entities. This is part of a broader anti-corruption push at DOJ, targeted at individuals with any connection to the federal, state, or local governments. Indeed, it is vital that any person working for or on behalf of foreign individuals, companies, and governments in political activities in the U.S. review the requirements of the statute and have experienced counsel to help navigate the nuances of the law.

THE BASICS

FARA is primarily a disclosure statute that requires individuals and entities operating in the U.S., and who are engaged in certain political and quasi-political activities on behalf of foreign principals, to make public disclosures to DOJ. The law is administered by

the FARA Registration Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) of the DOJ. Essentially, those acting as “agents of a foreign principal” in the U.S. must register their relationship with the DOJ. However, there are some exemptions.

Who Is Covered?

Under FARA, an “agent of a foreign principal” includes any person or entity that acts as a representative or employee, or otherwise acts at the order, request or under the direction or control of a “foreign principal” (or is financed in whole or major part by a foreign principal) and does any of the following:

- Engages in political activities within the U.S., such as intending to influence any U.S. government official or the American public regarding domestic or foreign policy or the political or public interests of a foreign government or foreign political party
- Acts as a public relations consultant, publicity agent, information service employee, or political consultant within the U.S.
- Solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value within the U.S.
- Represents the interests of a foreign principal before U.S. government officials or agencies

The broad array of activities that may trigger FARA registration requirements becomes even more expansive when considering how the law defines

“political activities.” Under FARA, political activities are defined as “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.”

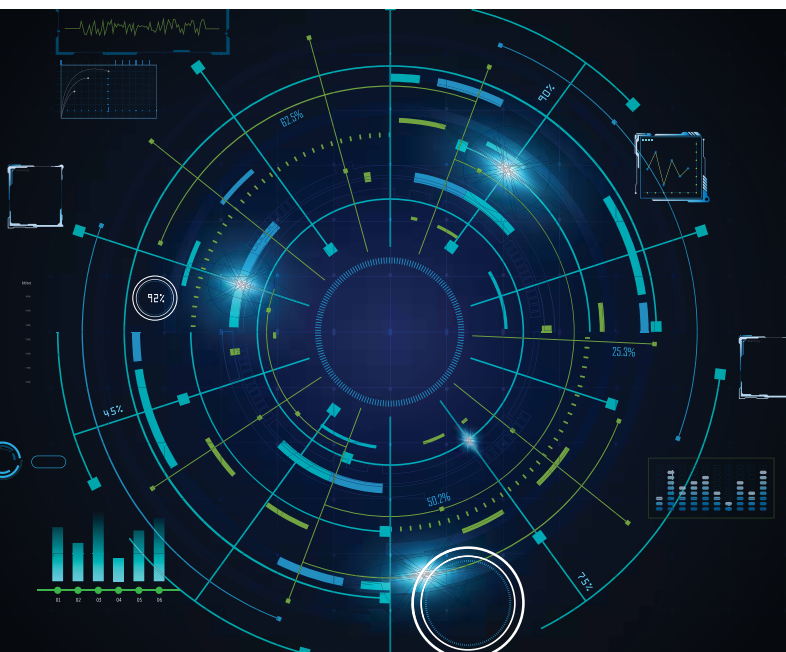
While the DOJ has further clarified the broad nature of the “political activities” definition through recent advisory opinions, it stands that actions taken on behalf of a foreign entity within the U.S. that in some manner have the potential to influence domestic or foreign policy may trigger FARA’s registration requirements.

Another point of complexity is FARA’s broad definition of a “foreign principal” to include not only foreign government and political parties, but also persons and organizations outside of the U.S. as well as corporations and entities organized under the laws of or having their principal place of business in a foreign country.

When read together, the scope and reach of FARA’s applicability is expansive and could include a wide range of activities conducted on behalf of foreign governments, political parties, and/or organizations, including for example: lobbying U.S. government officials, activities undertaken to promote the U.S. public’s perception of a foreign government or entity, or even providing a forum for foreign officials to promote their programs and ideologies.

Who Is Exempt?

Given its expansive coverage, the statutory exemptions to the act’s reporting requirements play a key role in determining whether activities contemplated by an organization may be covered by FARA. Even if an activity might otherwise trigger a



reporting requirement under the act, an exemption may apply to relieve an organization of the reporting requirements. Specifically, FARA provides exemptions for the following persons/activities:

- Diplomatic or consular officers of a foreign government recognized by the Department of State
- Bona fide commercial activity and other activity not serving predominantly a foreign interest
- Humanitarian fundraising
- Religious, scholastic, academic, fine arts, or scientific pursuits
- Legal representation of a disclosed foreign principal before any court of law or agency of the U.S. government
- Properly registered non-governmental principals under the Lobbying Disclosure Act (LDA)

While it is the responsibility of a person or entity to determine whether they are subject to the registration requirement, a party can submit a request for an Advisory Opinion to determine if certain contemplated activities are eligible for an exemption.

REPORTING AND REGISTRATION

In cases where the contemplated activities trigger FARA's reporting requirements and an exemption does not apply, the individual or entity is required to file an initial registration statement, some short form statements, and supplemental statements with the DOJ. Additionally, agents of foreign principals must submit "informational materials" to the DOJ.



Initial Registration

FARA mandates an initial registration statement be filed within 10 days of an individual or entity having agreed to act as an agent on behalf of a foreign principal, and that they cannot begin acting as an agent before registering. Initial registration requires individuals or entities to disclose certain information around the relationship including:

- Identity of the agent (including its corporate structure, where applicable)
- List of all partners, officers, and directors
- List of all individuals who will render services for the individual/entity in the interest of the foreign principal
- Identity of the foreign principal
- Detailed statement of the activities in which the individual/entity plans to engage on behalf of the foreign principal
- Certain contributions and disbursements related to the contemplated relationship
- Copy of the contract between the agent and the foreign principal, if one exists

Short Form Registration

As an additional step, every partner, officer, director, associate, employee and agent of a registrant who acts in furtherance of the interests of the foreign principal must file a short form registration statement. This is not required if an individual is engaged solely in clerical, administrative or similar duties. Any time there are changes to the information submitted in the short form registration or to a relevant employee's compensation, a new filing is required within 10 days of the event.

Supplemental Registration Statements

FARA requires that registrants file a supplemental statement every six months. The supplemental statement is due 30 days after the six-month reporting end date. Like the initial registration statement, supplemental statements require that each person includes updated information regarding, for example:

- Detailed description of any activities or services performed in furtherance of the agency relationship within the prior six-month reporting period
- Any changes in the agent's management and/or personnel

- Any monies or things of value received or disbursed in connection with the agency relationship
- Information regarding any "informational materials" disseminated by the agent in furtherance of its representation of the foreign principal

Filing Requirements for "Informational Materials"

Each FARA registrant is required to file with the DOJ any "informational materials" distributed in the course of the agency relationships. Informational materials are defined as any items, both physical and electronic, that an agent disseminates to two or more people on behalf of the foreign principal, which can include posters, brochures, social media posts, broadcasts, and videos. Informational materials must be filed with the FARA unit within 48 hours of dissemination.

While FARA does not limit or regulate the content of informational materials, it does require the inclusion of certain labeling. The suggested labeling is as follows: This material is distributed by [name of registrant] on behalf of [name of foreign principal]. Additional information is available at the Department of Justice, Washington, DC.

Recordkeeping Requirements

Registered agents under FARA are required to maintain all records of activities while acting as an agent of a foreign principal, up to three years after the termination of the agency relationship. Records must be readily available for DOJ inspection, which is authorized under FARA in order to better understand the activities conducted on behalf of foreign principals and to confirm the filings of registrants.



Specific records that must be maintained include:

- All correspondence, memoranda, and other written communications to and from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of, any of its foreign principals
- Original copies of all written contracts between the registrant and any of their foreign principals
- Records containing the names and addresses of persons to whom informational materials have been distributed
- All financial records relating to the registrant's activities on behalf of the foreign principal
- Names and addresses of all employees and agents of the registrant

These records must also be made available for inspection by the NSD and Federal Bureau of Investigation upon request.

Potential Penalties for Non-Compliance

If an agent intentionally and willfully violates any provision of FARA, the DOJ may impose criminal penalties including fines up to \$10,000, up to five years of imprisonment, or both. Agents who willfully make false statements or intentionally fail to provide the required registration statements may be subject to additional criminal penalties.

RECENT DEVELOPMENTS IN FARA ENFORCEMENT

The recent increased enforcement of FARA from the Department of Justice highlights its renewed commitment to transparency by investigating and convicting individuals for FARA violations – including most high-profile individuals.

Legislative Developments

On September 19, 2024, U.S. Senators Jim Risch (R-ID) and Charles Grassley (R-IA) introduced the Strengthening Trade, Regional Alliances, Technology, and Economic and Geopolitical Initiatives concerning China (STRATEGIC) Act, which intends to, among other things, revise FARA to eliminate certain registration exemptions and strengthen the DOJ's investigative capabilities. If enacted, the STRATEGIC Act would eliminate the Commerce and Lobbying Disclosure Act exemption for agents working on behalf of China, Iran or Russia. Additionally, the Act provides additional resources to the DOJ related to FARA investigations, including by authorizing the issuance of civil investigative demands by the Department.

Throughout 2024, several states, including Arizona, California, Georgia, Oklahoma, and Tennessee, introduced bills in their legislatures requiring agents of foreign principals to register their activities. While the requirements of these state-level (so called "baby FARA") statutes vary, each is heavily drawn from the federal statute, including in their definition(s) of registerable activities. Notably, however, few of these state-level statutes contain exemptions to registration similar to the Commerce or Lobbying Disclosure Act exemptions in FARA. As such, individuals/entities that rely on these exemptions under the federal regime may find themselves subject to new state-level registration obligations.



Recent Enforcement Actions

United States v. Linda Sun and Chris Hu: On September 3, 2024, a DOJ indictment was unsealed charging former aide to New York Governors Kathy Hochul and Andrew Cuomo, Linda Sun, and her husband, Chris Hu, with conspiracy to violate FARA, among other criminal charges, by allegedly acting on behalf of the government of the People's Republic of China (PRC) and the Chinese Communist Party (CCP). According to the DOJ, Sun acted at the request of the PRC and CCP and engaged in numerous political activities, including “blocking representatives of the Taiwanese government from having access to high-level New York State officers; changing high-level New York State officers’ messaging regarding issues of importance to the PRC and the CCP; obtaining official New York State proclamations for PRC government representatives

without proper authorization; attempting to facilitate a trip to the PRC by a high-level New York State politician and arranging meetings for visiting delegations from the PRC government with NYS government officials.”

United States v. Congressman Enrique Roberto “Henry” Cuellar: In May 2024, the DOJ charged Congressman Cuellar with accepting nearly \$600,000 in bribes from the government of Azerbaijan and a Mexican bank. According to the indictment, Congressman Cuellar used his office to influence U.S. foreign policy in favor of Azerbaijan and to advise and pressure high-ranking U.S. Executive Branch officials regarding measures beneficial to the Mexican bank. Cuellar is charged under the same conflict-of-interest statute as Senator Robert Menedez and is scheduled for trial in spring 2025. This is an example of FARA charges being brought alongside other anti-corruption charges.

United States v. Barry Bennett and Douglas Watts: In January 2024, prominent political consultants, Barry P. Bennett and Douglas Watts, entered into Deferred Prosecution Agreements (DPAs) to resolve a DOJ investigation into violations of FARA and related offenses. According to the DOJ, the charges arose from a “scheme to wage a lobbying and public relations campaign designed to benefit” the government of a foreign country (Country A) “while concealing the foreign government’s connection to the effort.” The DPA alleges that Bennett established a limited liability company, managed by Watts, which “ran a lobbying and public relations campaign designed to cast one of Country A’s rivals in a negative light for its conduct, and thereby to improve Country A’s standing with the U.S. government and public relative to this rival.” Both criminal indictments charging Bennett and Watts with, inter alia, failing to register under FARA will be dismissed with prejudice if/when both individuals fully comply with the terms of the DPA.



United States v. Menedez: In September 2023, then-Senator Robert Menedez (D-NJ) and his wife, Nadine Menendez, were indicted on charges that they participated in a years-long bribery scheme, accepting hundreds of thousands of dollars in bribes from co-defendants Wael Hana, Jose Uribe, and Fred Daibes, in exchange for Senator Menendez's agreement to use his official position to protect and enrich his alleged coconspirators and to benefit the Government of Egypt. In October 2023, the Department of Justice filed a superseding indictment, alleging that then-Senator Menendez acted as an agent of a foreign principal, which is prohibited for members of Congress, and that Nadine Menedez and Wael acted as agents of a foreign principal without registering under FARA. On July 16, 2024, following a ten-week trial, a jury convicted Senator Menendez and two co-defendants on 16 counts of corruption. Menendez resigned from office on August 20, 2024 and is set to be sentenced in 2025.

United States v. Prakazrel Michel: In April 2023, rapper and businessman Prakazrel "Pras" Michel, founding member of the hip-hop group the Fugees, was convicted of ten counts involving a conspiracy that used millions of dollars of foreign money for illegal campaign contributions, including two counts of serving as an unregistered foreign agent. Michel conspired with Low Taek Jho, a Malaysian financier, to donate to Barack Obama's 2012 presidential campaign through a series of straw donors. Regarding Michel's FARA violations, Michel was found guilty of serving as an unregistered foreign agent for lobbying the Trump administration to drop DOJ's investigation into Jho Low's alleged embezzlement and lobbying the Trump administration on behalf of Chinese government officials to extradite a Chinese dissident who faces fraud charges in the United States.

DOJ v. Stephen A. Wynn: In May 2022, the DOJ filed a civil enforcement action in the U.S. District Court for



the District of Columbia to compel Stephen A. Wynn, a U.S. businessman and hotelier who previously served as the CEO of Wynn Resorts, to register under FARA as an agent of the People's Republic of China (PRC) and a senior official of the PRC's Ministry of Public Security (MPS). According to the complaint, Wynn contacted then-U.S. President Trump and members of his administration from at least June to August 2017 to convey the PRC's request to cancel the visa or otherwise remove from the U.S. a Chinese businessman charged with corruption seeking political asylum in the U.S. It was alleged that Wynn was acting as an agent to Sun Lijun, then-Vice



Minister of the MPS and conveyed the request directly to President Trump. In October 2022, the U.S. District Court for the District of Columbia granted Wynn's motion to dismiss the civil suit, concluding that any agency relationship that existed between Wynn and the PRC had been terminated before the DOJ filed the suit. On June 25, 2024, the D.C. Circuit released its opinion holding that the District Court's granting of Wynn's motion to dismiss was proper and upholding the determination that the DOJ could not compel Wynn to retroactively register as a foreign agent under FARA.

DOJ Investigation of John R. Allen and Richard G. Olsen: In 2022, the DOJ successfully obtained a search warrant from the U.S. District Court for the Central District of California to investigate the records of John R. Allen, a retired four-star Marine General who commanded all American troops in Afghanistan, and Richard G. Olson, former U.S. Ambassador to the United Arab Emirates and Pakistan who eventually pled guilty to related charges of undisclosed lobbying. The search warrant alleged that General Allen met with top Qatari and American officials to diffuse an impending crisis between members of the Persian Gulf states – notably Saudi Arabia, Qatar, and the United Arab Emirates. General Allen had finished his service with the military and allegedly agreed to travel to Doha for a fee, meet with American officials, including members of Congress, and the national security adviser on behalf of Qatar.

DOJ v. Imaad Shah Zuberi: Zuberi, an American businessman, operated a business entity called Avenue Ventures, which largely consisted of receiving funds from foreign clients and using them to make political campaign contributions. In November 2019, Zuberi pled guilty to a FARA offense, a campaign finance offense, and tax laws, and separately pled guilty to obstruction of justice. He was sentenced to 12 years in prison, including the statutory maximum five years on the FARA charge, and ordered to pay



\$15.7 million in restitution and a total criminal fine of \$1.75 million, which included a \$1 million fine for the FARA count. Zuberi was convicted for soliciting foreign nationals and representatives of foreign governments with claims he could use his contacts to change U.S. foreign policy to benefit his clients. In relation to the FARA charge, Zuberi admitted to submitting false registration statements that concealed his role in a lobbying effort on behalf of the Government of Sri Lanka, his political contributions, and millions of dollars he received.

DOJ Public Advisory Opinions

The DOJ has issued a significant number of advisory opinions addressing questions related to the reporting requirements of FARA and the various exemptions. Below are a few noteworthy opinions that help clarify the DOJ's interpretation of FARA and its exemptions:

Registration Absent Foreign Funds: In a March 25, 2024, advisory opinion, the DOJ reminded individuals and entities that FARA registration may be triggered even absent a prospective agent receiving funds from a foreign principal. Specifically, the DOJ informed a U.S. limited liability company that it was required to register under FARA where it mobilized U.S. volunteers in coordination with a foreign principal

“on activities that directly advance those foreign principals’ interests.” As stated by the DOJ: “While [U.S. Entity] avows that it has no...agreement with and is not receiving compensation from [Foreign Political Party] or [Foreign Government Office], no such agreement or compensation is required to establish agency under FARA.”

“Agency” Under FARA: In a May 2023 advisory opinion, the FARA Unit found that a non-governmental organization (NGO) was not obligated to register under FARA, despite the fact that it was incorporated in the U.S. and intended to send senior retired military officers to a foreign country to lecture on “U.S. national military strategy, combat logistics, law of war, mission command, special operations, and defensive measures.” Moreover, the NGO intended to “correspond with each member of Congress for the purpose of describing activities previously undertaken by [the NGO]...in furtherance of enhancing the security posture of [the foreign country]...” The DOJ determined that the NGO was not an “agent” of the foreign country because it was acting “completely of its own initiative, and that it has not received any instruction or request from any agency or part of the [foreign government]...”



Jurisdictional Nexus “Within the United States”:

Several recent advisory opinions offer insights into the FARA Unit’s broad interpretation of the scope of FARA activities taking place “within the United States.” In February 2023, the DOJ issued an advisory opinion providing that communications which are delivered remotely via an online platform fall within the scope of FARA, if they “originate...in the United States.” This broad interpretation of the requirement that activities take place “within the United States” was underscored by a second advisory opinion, also issued in February 2023, where the DOJ found that a U.S. company was acting as an “information service employee” and “publicity agent” under FARA when it permitted a foreign principal to “create a virtual entity presence” and “display[ed] that presence” on the U.S. company’s online platform, which was “clearly viewable in the United States.”

Definition of “Political Consultant”: The DOJ issued an advisory opinion providing further clarification on the definition of a “political consultant,” and, for many purposes altered the scope of this definition altogether. Under FARA, the term “political consultant” means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the U.S. or the political or public interest, policies, or relations of a foreign country or of a foreign political party. In the advisory opinion, DOJ acknowledges the wide scope of the definition but, relying on legislative history, found that a political consultant must engage in certain “political activities” in order for a registration obligation to arise, significantly narrowing the scope of political consultancy.

Lobbying Disclosure Act Exemption: In response to a request for an advisory opinion, the DOJ concluded that a U.S. law firm did not need to register under FARA, as its activities for a foreign client would be limited to lobbying activities, as described in the Lobbying Disclosure Act. Since the law firm was



registered under the LDA and its client was not a foreign government or foreign political party, the DOJ determined that registration under FARA was not required.

Religious, Scholastic, Academic, Scientific, or Fine Arts Exemption: In 2020, the DOJ issued an advisory opinion clarifying that, because a non-profit organization's activities were limited to raising public awareness of the arts, it was not required to register under FARA. The DOJ reached this conclusion despite the fact that the U.S. non-profit was established for the purpose of raising public awareness of a foreign country's "art culture, literature, and performing arts" and the country's ambassador served as a non-voting member of the Board. However, the DOJ cautioned that registration under FARA would be required in the event the non-profit organization participated in any activities which could be considered "political activities" or other registerable activities for the foreign embassy.

Legal Representation Exemption: In responding to a law firm's request for an advisory opinion asking the DOJ to "delineate and explain" which categories

of activities would require registration under FARA, the DOJ determined that certain activities, despite being completed by an attorney for a foreign principal would fall outside the legal representation exemption and therefore would require registration. These activities included: providing "legal advice and analysis on law and policy regarding matters and developments that concern and affect U.S. [foreign country] relations," "attending regular meetings" at which the foreign country's lobbyists discussed "proposed legislation and legislative strategy," sharing memoranda prepared by the law firm's lobbyists "regarding pending legislation" and drafting responses to media inquiries to be delivered by the embassy of the foreign country. The FARA Unit expanded on this interpretation of the legal representation exemption in a 2023 advisory opinion stating that the exemption "does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record."

BUCHANAN'S EXPERIENCE WITH FARA

For individuals and entities engaging in activities potentially requiring registration under FARA, having a team of experienced lawyers on their side is crucial to fully comply with the nuances of the law and avoid inadvertent violations. With more than 20 years of experience representing clients on issues related to FARA, Buchanan Ingersoll and Rooney's team of National Security attorneys are intimately familiar with FARA and remain abreast of the latest developments and DOJ enforcement actions. Our attorneys routinely counsel and advise clients in relation to FARA registration requirements, requests for advisory opinions, record keeping requirements, audits, and potential enforcement actions.

Our International Trade & National Security practice group members have extensive experience working in government and agency capacities, as well as within industries we serve. We have fostered excellent working relationships with key federal, state and regulatory bodies, and routinely represent clients on FARA issues before the National Security Division of the U.S. Department of Justice. Our well-rounded team is uniquely qualified to assist clients in navigating FARA and ensuring compliance.



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In his specialty practice, Dan Pickard brings more than 20 years of experience providing guidance pertaining to the Foreign Agents Registration Act (FARA), including registration obligations, assisting with audits, and obtaining advisory opinions from the Department of Justice. He has extensive experience in regard to foreign policy and national security matters such as U.S. economic sanctions, export controls, including the International Traffic in Arms Regulations (ITAR), anti-boycott measures, and the Foreign Corrupt Practices Act (FCPA). Dan provides comprehensive international trade law compliance guidance, including to U.S. and international clients that provide goods and services that may be regulated due to national security reasons. He develops customized and specialized corporate compliance programs related to the FCPA, ITAR, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and mitigating Foreign Ownership, Control, or Influence (FOCI) issues.



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