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The Foreign Agents Registration Act ("FARA"): A Guide for the Perplexed

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Election and Political Law, White Collar Defense and Investigations

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In 1938, Congress enacted the Foreign Agents Registration Act ("FARA"), requiring "foreign agents" to register with the Attorney General. As amended over the years, it applies broadly to anyone who acts on behalf of a "foreign principal" to, among other things, influence U.S. policy or public opinion. In recent years, FARA has moved from a niche compliance concern to a regular feature of the enforcement landscape. Prosecutors have brought more FARA prosecutions in the last several years than they had pursued in the preceding half century. As a result, in-house lawyers have significantly boned up on this famously vague criminal statute at a time when the number of attorneys with deep FARA experience remains strikingly limited.

The renewed focus on foreign agents initially began with a 2016 DOJ Inspector General ("IG") report. Continued audits of registered foreign agents by the FARA Unit (the Department of Justice office that administers FARA), ongoing criminal enforcement, and more aggressive interpretations of the statute in advisory opinions and informal advice from the FARA Unit all have signaled a sea change.

In the 2016 report, the IG suggested that the Department's enforcement of FARA was too lax, pointedly noting the rarity of prosecutions, and recounting FBI field agents' complaints that it was too hard to secure DOJ approval to file FARA charges. The IG's report recommended that DOJ's National Security Division adopt a comprehensive FARA enforcement strategy. Since then, DOJ has brought several dozen criminal FARA charges and proposed sweeping regulatory changes to the statute through a Notice of Proposed Rulemaking. And in September 2025, the President issued National Security Presidential Memorandum 7 ("NSPM-7") that directed federal agencies to use FARA to "investigate, prosecute, and disrupt" entities with foreign ties engaged in activities that the administration considers political violence or intimidation.

Below we provide a detailed primer on FARA registration, highlighting the ways in which it is relevant to a broad cast of characters, including multinational corporations. But first, here are some of the key points to keep in mind:

- FARA is written so broadly that, if read literally, it could potentially require registration even for some routine business activities of law firms, lobbying and public relations firms, consulting firms, nonprofit advocacy groups, charitable organizations, ethnic affinity organizations, regional trade promotion groups, think tanks, universities, media

organizations, trade associations, U.S. subsidiaries of foreign companies, and other commercial enterprises.

- There does *not* need to be a foreign government client.
- There does *not* need to be a written contract.
- There does *not* need to be any payment of a fee.
- A mere "request" from a foreign person or entity (such as a foreign government official or, in some circumstances, even a foreign private sector individual or company) for help setting up meetings with U.S. government officials could trigger registration.
- A request from a foreign person or entity to provide advice regarding how best to influence U.S. policy or U.S. public opinion could trigger registration.
- FARA has at least a five-year statute of limitations.
- There are few cases clarifying FARA's broadly worded provisions. And, while the DOJ FARA Unit commendably started publishing some of its advisory opinions a few years ago, these short opinions sometimes are light on legal analysis, often are heavily redacted, and can be difficult to apply to other situations. This leaves prosecutors plenty of space to bring novel test cases, and parties who are new to the statute ample room to misjudge its boundaries.

FARA in a Nutshell

FARA is a complicated, arcane, and loosely worded statute. Whether registration is triggered is highly fact dependent, turning on whether agency exists (as defined by FARA), the nature of the activities conducted by the agent, and whether any of FARA's amorphous "exemptions" apply.

The statute requires "agents of foreign principals" to register with the DOJ and file both detailed disclosure reports and copies of any "informational materials" that are distributed within the United States. Such materials must bear a stigmatizing disclaimer reflecting that they were prepared by a foreign agent. When FARA registration is required, both individuals acting as agents and their employer must register.

While foreign governments and political parties are well understood to be "foreign principals," the term also includes any *non*-U.S. individual, partnership, association, corporation, or "organization." A foreign parent company of a U.S. subsidiary would be a foreign principal, for example.

Broad Triggers

To become a "foreign agent," an individual or entity must engage—within the United States—in certain FARA-triggering activities as an agent of, or "in any other capacity at the order, request, or under the direction or control" of, a foreign principal. Although there is some law clarifying what would constitute acting under the "direction or control" of a foreign principal, the term "request" is very broad and seems to go well beyond traditional principles of agency law. The one court decision that briefly touches on a "request" that is sufficient to trigger FARA registration does little to offer a practical answer. DOJ's formal response to the 2016 IG's report provided little additional guidance, although the Department took the position that it looks for evidence of "tasking" by the foreign principal to the agent.

So, having a written contract or receiving a payment for services rendered, while not required for FARA registration, are strong evidence of agency and factors that the FARA Unit will consider in assessing whether the activities are undertaken for the foreign principal. But, as the FARA Unit has indicated in its guidance, even without a contract or payment, there are other indicia of agency in light of the breadth of the term "request."

Assuming that an individual or entity is acting as an "agent" of a foreign principal, the obligation to register under FARA is triggered when the agent conducts, on behalf of the foreign principal, one or more of the following activities within the United States:

1. Engaging in "political activities," a term that encompasses any activity that is intended to, or even "believed" to, influence the U.S. government *or any section of the U.S. public* regarding: (1) formulating, adopting, or changing the foreign or domestic policies of the United States or (2) the "political or public interests, policies, or relations of a government of a foreign country or a foreign political party."
2. Acting as a "public-relations counsel," "publicity agent," "information-service employee," or "political consultant."
3. Collecting or dispensing money for or in the interests of a foreign principal.
4. Representing the interests of the foreign principal before an agency or official of the United States Government, generally by making direct contact with government officials.

These triggers for registration are, on their face, extremely broad. And some courts have interpreted them literally. In 2019, for example, a federal district court in Florida held that a company that agreed to broadcast a government-owned news agency's radio programs was required to register under FARA because it was acting as a "publicity agent." FARA practitioners nonetheless often assume that some of the triggers cannot literally mean what they say (*e.g.*, collecting or dispensing *any* funds for or in the interests of any foreign principal). And DOJ itself has often placed a gloss on the FARA registration triggers, reading into them narrowing language that does not appear in the statute.

Based on FARA's legislative history, DOJ has read the definition of "political activities" into other statutory registration triggers; for example, it concluded that one could not be acting as a "political consultant" for FARA purposes unless one was also engaging in political activities, as defined in the statute. Indeed, there is some legislative history to support this position, notwithstanding the statute's plain language which treats "informing or advising" a foreign principal regarding the "domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party" as political consulting that triggers registration. In a 1989 letter to Congress concerning Henry Kissinger's activities for foreign clients, DOJ advised Congress that Kissinger was not required to register because "the Department has consistently interpreted the term 'political consultant'… to mean any person who takes steps beyond merely advising the foreign principal, such as arranging meetings with U.S. Government officials on its behalf or accompanying the principal to such meetings."

FARA has no *de minimis* threshold. It can be triggered by even the slightest activity that meets any one of the statutory triggers. A single meeting, for example, with a U.S. official by an executive of a company headquartered outside the United States, or by its U.S. subsidiary on behalf of the foreign parent, might satisfy the "representation" trigger. And the mere act of

hosting a conference, distributing a policy report, requesting a meeting, or reaching out to opinion leaders on behalf of a foreign principal could satisfy the "political activities" trigger.

Practitioners have placed great weight on the statutory language specifying that FARA only applies to activities "within the United States." Here too the FARA Unit recently has seemed inclined to take an extremely broad view of what constitutes activity "within the United States," suggesting that even a very limited nexus to the United States is enough to trigger the statute's jurisdiction over related activities outside the United States. Indeed, in one 2017 advisory opinion, the FARA Unit stated that it did "not concur" with the assertion that registration for FARA-triggering activities would not be required if those engaging in the activities were "physically outside the United States at the time of performance or delivery of the service." In other opinions, the FARA Unit concluded that activity was sufficiently "within the United States" where a company's online platform was "clearly viewable in the United States" or where services would be delivered remotely via an online platform that "will originate . . . in the United States." Federal courts have not addressed DOJ's broad interpretation of the jurisdictional element of the statute.

Vague Exemptions

By this point, one might wonder why there are not tens of thousands of FARA registrants (currently there are only about 550). Apart from non-compliance, which is common, the main explanation is that even when the registration triggers are satisfied, there are several statutory and regulatory "exemptions" that can be relied upon to exempt a person from registration. Unfortunately, the most widely used exemptions are not well defined, DOJ's advisory opinions interpreting them remain sparse and somewhat inconsistent, and there is essentially zero case law regarding the scope of the exemptions. The most commonly invoked exemptions are summarized below.

Statutory Commercial Exemption under Section 613(d)(1)

FARA has a statutory commercial exemption (appearing in section 613(d)(1) of the statute) that applies to "private and *nonpolitical* activities in furtherance of the bona fide trade or commerce" of the foreign principal. Implementing regulations indicate that trade and commerce include the purchase and sale of commodities, services, or property. Because this exception applies only to "nonpolitical" activity, it does not apply to efforts to influence the U.S. government or a section of the U.S. public regarding U.S. policy matters or the political or public interests of a foreign government or political party. Therefore, the exemption is narrow.

Regulatory Commercial Exemption for "Not Serving Predominantly a Foreign Interest" under Section 613(d)(2)

Probably the most frequently used exemption to FARA's registration requirement is a regulatory commercial exemption promulgated in 2003 pursuant to an exemption in the statute for "other activities not serving predominantly a foreign interest" (appearing in section 613(d)(2)). Unlike the statutory commercial exemption discussed above, this regulatory commercial exemption does apply to political activities. Interpreting the statutory authority that exempts "activities not serving predominantly a foreign interest," DOJ's current regulations provide that "political activities" undertaken for a foreign corporation "directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation" are exempt. The current regulations impose some limitations on the application of this exemption. Most

significantly, it is unavailable if the activities are directed by or "directly promote" the public or political interests of a foreign government or political party.

There is little published guidance regarding when activities "directly promote" the public or political interests of a foreign government. In several advisory opinions, however, the FARA Unit has appeared to take a more expansive view of this language, treating contacts in the United States about matters that are also important to a foreign government as potentially falling outside the commercial exemption, even where a foreign corporation has a legitimate commercial interest in the same issue. For example, in a 2018 advisory opinion, the FARA Unit determined that activities aimed at improving a foreign state bank's suitability for building commercial relationships with U.S. financial institutions directly promotes the interests of a foreign government. Similarly, the FARA Unit concluded that seeking to "expand energy sanctions" and to "allocate a certain proportion of aid and investment" to a specific foreign country's energy resources directly promotes the interests of the foreign government. On the other hand, in another opinion, the FARA Unit seemed to interpret the commercial exemption's "directly promote" language narrowly, placing an emphasis on whether there was direct involvement by the foreign government. Due to the fact-specific nature of these opinions, it is important to carefully analyze the extent to which a foreign government's public or political interests would be promoted by political activities in the United States even if the impetus for the activities is the private sector foreign principal's bona fide commercial objectives.

DOJ regulations also expressly provide that this exemption is available even to state-owned enterprises that are wholly owned by a foreign government. This is significant given the huge number of state-owned enterprises around the world, many of which have business operations in the United States pursuing commercial objectives that are often separate and distinct from the foreign policy objectives of their governmental owners. In recent years, the FARA Unit has seemed uncomfortable with the fact that its regulations expressly allow state-owned enterprises to avail themselves of the commercial exemption.

The 2025 NPRM proposed significant changes to the regulatory commercial exemption. Specifically, the Department proposed to replace the current exemption language with a regulation applying a multi-factor "predominant interest" test to determine whether, given the totality of the circumstances, the predominant interest being served is domestic rather than foreign.

If the NPRM were adopted, its rewriting of the commercial exemption would have broad-ranging implications because it makes the exemption less clearly available to many foreign corporations that engage in commercial activities in the United States that further the interests of their foreign business.

It has been unclear whether the Trump administration would advance the rulemaking or otherwise continue this interpretation of the regulatory commercial exemption. Curiously, in October 2025, DOJ quietly (and maybe inadvertently) published and then unpublished 17 new advisory opinions regarding FARA. In the new opinions, including some dated during the second Trump administration, DOJ hinted that it was applying the predominant interest test proposed in the NPRM. But, in these more recent advisory opinions, DOJ has not clearly departed from the current regulatory language where the foreign principal is a commercial business. These shifting tests have created confusion and significant uncertainty about the application of one of the most relied on exemptions to FARA. So, while the current regulation exempting certain commercial activity remains, corporations may need to carefully document

both their commercial purposes and their domestic interests in the matter to maximize reliance on the exemption.

The LDA Exemption

When Congress strengthened federal lobbying disclosure requirements in the mid-1990s through the Lobbying Disclosure Act ("LDA"), it simultaneously added a new exemption to FARA that permits an agent of a foreign private sector principal to satisfy any FARA obligation by registering under the LDA, so long as the agent has engaged in at least some lobbying activities. Many entities that would otherwise be foreign agents choose to satisfy FARA, where applicable, by registering and reporting under the LDA, which is generally considered far less burdensome and somewhat less stigmatized.

The LDA exemption is *not* available to an agent of a foreign government or political party, however. Moreover, even if the agent is engaged by a private entity, DOJ regulations provide that the exemption is not available if "the principal beneficiary" of the work is a foreign government or political party. There is no definition of "principal beneficiary," and in the recent past the FARA Unit has taken an increasingly broad view of what would make a foreign government the principal beneficiary of actions undertaken by an agent on behalf of a private sector foreign principal. A surprising footnote in a 2019 advisory opinion, for example, takes the position that "there are situations in which a foreign government or political party may not be *the* principal beneficiary, but *a* principal beneficiary of lobbying activities in which the LDA exemption would not apply." In the 2025 NPRM, DOJ acknowledged the "confusion" it had created in this opinion. As a result, it walked back this position, stating that the advisory opinion "does not reflect the present enforcement intentions of the Department" and "the governing standard remains as it is written in the current regulation."

As noted, an agent who seeks to take advantage of the LDA exemption also must engage in at least some "lobbying activities" on behalf of its foreign principal. This means, for example, that if the agent is engaged solely to provide public relations advice or fundraising within the United States, it could not avail itself of the LDA exemption and would have to register under FARA.

Consistent with the trend of strengthening FARA, several Members of Congress have introduced legislation to eliminate the LDA exemption from FARA or to require an audit addressing how the exemption is used. Indeed, in the DOJ IG report, FARA Unit staff expressly urged that Congress eliminate the LDA exemption to "once again require those who lobby for foreign commercial interests to register under FARA." And in 2022, DOJ submitted a letter to Congress advocating for the repeal of the LDA exemption.

The Lawyer's Exemption

FARA also includes a limited exemption for lawyers engaged in the practice of law on behalf of a foreign client. It does not apply to a lawyer's attempt to influence agency personnel with respect to U.S. government policy matters, or the public interests of a foreign government, except in the course of judicial proceedings; criminal or civil law enforcement inquiries, investigations, or proceedings; and agency proceedings required by statute or regulation to be conducted on the record. For example, the FARA Unit concluded in a 2012 advisory opinion that a U.S. law firm had an obligation to register under FARA for representing a foreign company in the acquisition of a U.S. company, reasoning that the representation involved "educating U.S. policymakers" about the foreign company's proposed acquisition. The intent behind this

exemption appears to be to require registration by law firms when they act more as lobbyists, public relations advisors, or political consultants than as legal counselors. But this is a very fine line, requiring careful parsing of the language of the lawyer's exemption.

Additionally, while the text of the exemption applies to legal representations before federal agencies in "proceedings required by statute or regulation to be conducted on the record," DOJ has recently applied the exemption to off-the-record advocacy in certain narrow circumstances. For example, in advisory opinions, DOJ has determined that absent formal process legally required to be conducted on the record, legal representation before the U.S. government may still qualify for the lawyers' exemption if the attorney discloses the foreign principal and does not attempt to influence U.S. policies or advocate to U.S. officials outside the relevant decision-making process.

The Academic Exemption

Universities, think tanks, and other scholarly institutions often look to FARA's "academic exemption" to avoid registration. This exemption applies to persons "solely" engaged in *bona fide* religious, scholastic, academic, or scientific pursuits or the fine arts. DOJ regulations provide, however, that it does *not* apply if the person is engaged in "political activities." As indicated, the statute defines political activities broadly to cover activities intended to influence any section of the U.S. public regarding policy or the public interests of a foreign government or political party. This definition covers advocacy activities common to NGOs and scholarly institutions. As such, these organizations may need to look to other exemptions to the statute. Under DOJ's recent approach in advisory opinions, the (d)(2) exemption for activities not serving predominantly a foreign interest may provide a more flexible option, depending on the nature of the activities.

Judicial and Enforcement Trends

There have been several recent judicial and enforcement developments regarding FARA. Notably, in 2024, the D.C. Circuit court affirmed a district court opinion holding that DOJ cannot compel retroactive registration under FARA after the agency relationship with a foreign principal has ended. In that case, DOJ sought to compel U.S. businessman Steve Wynn to register retroactively under FARA for allegedly lobbying Trump administration officials on behalf of the People's Republic of China. Based on a 1987 precedent interpreting an ambiguous part of the statute regarding civil enforcement, the court reasoned that Wynn did not have a current obligation to register because his relationship with China ended "long ago" and he had "ceased acting as a foreign agent." The authority of the decision is limited to the D.C. Circuit, and DOJ could still seek this type of civil enforcement in other jurisdictions. The opinion also does not affect DOJ's criminal enforcement authority.

With respect to criminal enforcement, Attorney General Pam Bondi announced in an early 2025 memorandum that DOJ would shift away from its recent aggressive approach to FARA enforcement. Rather than using FARA as a tool for many different fact patterns, Attorney General Bondi stated that going forward "[r]ecourse to criminal charges under the Foreign Agents Registration Act . . . shall be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors." The memorandum further provides that the Department's FARA Unit should instead "focus on civil enforcement, regulatory initiatives, and public guidance." DOJ has not yet clarified the meaning of "alleged conduct similar to more traditional espionage," although the more recent NSPM-7 memorandum ordered DOJ to use

FARA to disrupt activities that the administration views as "political violence" and "intimidation," which provides some insight into the administration's priorities.

Additionally, recent criminal enforcement illustrates a continued focus on prosecution for covert influence operations, particularly with respect to China, Korea, and Venezuela. Recently, DOJ has successfully pursued high profile criminal enforcement matters under FARA and related statutes against Fugees band member Pras Michel and a former CIA official. And, criminal cases against alleged agents of the Republic of Korea, the recently ousted Maduro regime, and the People's Republic of China are currently pending.

Practical Implications

Given FARA's breadth and ambiguity, and DOJ's recent shift to interpreting the exemptions more narrowly, lawyers and compliance personnel should be attuned to the following common traps:

- **Requests received by a U.S. company from a foreign business partner or a foreign affiliate to arrange meetings with U.S. officials.** Helping a foreign entity or individual engage directly with the U.S. government, such as by setting up a meeting, is perceived by the DOJ as core FARA activity. The statute can be triggered without a contract or payment, and even if the foreign person is not a government official. Companies may think that they are simply doing a favor for a foreign business partner, when they in fact have waded deeply into FARA territory. To the extent the contact is unrelated to the company's own activities, the commercial exemption will not apply. And even if the company is already LDA registered, it is probably not registered for the foreign business partner, so the LDA exemption also will not apply.
- **Private sector lobbying on an issue that is deeply connected to a foreign government's interests.** Global companies often face commercial issues that are intertwined with governmental issues. For example, companies often have legitimate business reasons to lobby for or against sanctions on particular countries, or to encourage the United States to adopt specific trade policies directed at particular countries. It may seem natural to coordinate that lobbying with the government of the affected state, but working too closely with a foreign government or its agents can create FARA risks. What if the foreign government "requests" that the company target its activities in a particular way? Even if the company has a scrupulous LDA compliance program, the LDA exemption may not be available if the activities principally benefit the foreign government, despite the company's own parallel commercial interest.
- **Requests from a foreign embassy, or from other foreign government officials, to arrange meetings or to provide strategic advice regarding a policy matter before the U.S. government.** Depending on the particulars, including whether the advice is rendered within the United States, it is possible that behind-the-scenes advice on influencing U.S. policy or public opinion could trigger registration. Arranging meetings also likely would trigger registration.
- **Business development activities involving foreign clients.** It is not unusual for law firms, public relations firms, consulting firms, and government contractors that do business around the world to be asked by foreign clients for favors, such as making an introduction to officials or thought leaders in the United States, providing advice on a dispute with the U.S. government, or helping with media relations or other staff support for a client's visits in the United States. While these may seem like routine client

relations activities meant to strengthen relationships, they could trigger FARA registration, depending on the circumstances.

- **Foreign economic investment promotion for a foreign principal**. Efforts to promote U.S. investment in a foreign country on behalf of a foreign principal can also create meaningful FARA risk. Encouraging U.S. investors to place capital in a foreign country or advising foreign governments on how to attract U.S. investment are generally treated as political activity. DOJ has likewise treated outreach to U.S. companies on behalf of a foreign government to encourage them to establish a presence or expand operations in a particular foreign country as activity requiring registration. Accordingly, companies engaged in foreign investment promotion should carefully assess whether interactions with foreign government partners or U.S. investors could trigger FARA and build appropriate compliance safeguards.

Although most major corporations have elaborate compliance manuals and training efforts, FARA is often a blind spot that is absent from corporate compliance programs. In light of recent enforcement trends and shifting guidance from DOJ, most companies that have international business operations, or otherwise deal with foreign governments and firms, should include FARA in their compliance programs. Those companies that do have FARA compliance policies often integrate them with their global anti-corruption and government affairs policies.

Covington has one of the nation's most experienced and long-standing FARA practices, which includes attorneys in our Election & Political Law and White Collar Defense & Investigations practice groups. The firm litigated and won a rare civil case limiting the scope of DOJ's authority under FARA, in *Attorney General of the United States v. Covington & Burling*. Covington routinely advises U.S. and international clients on compliance with FARA, obtains advisory opinions from the FARA Unit, represents clients in FARA audits and internal investigations, and defends clients accused of violating FARA.

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