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Foreign Agents Registration Act (FARA): Are you working on behalf of a “foreign principal”?

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The U.S. Department of Justice (DOJ) on recently [filed a civil suit](#) to force Stephen A. Wynn to register under the Foreign Agents Registration Act (FARA) as a foreign agent working for the People’s Republic of China (PRC). The DOJ claims that in 2017, Wynn, former chief executive of Wynn Resorts, leveraged his relationship with President Donald Trump and members of his administration to advance Beijing’s interests and to protect Wynn’s own business interests in Macau. The DOJ says it advised Wynn to register as an agent but that he declined to do so.

According to the complaint, Wynn contacted President Trump and members of his administration to convey the PRC’s request to cancel the visa or otherwise remove from the United States a Chinese businessperson who left China in 2014, was later charged with corruption by the PRC, and sought political asylum in the United States. Wynn engaged in these efforts at the request of Sun Lijun, then-Vice Minister of the PRC’s Ministry of Public Security. Wynn conveyed the request directly to Trump over dinner and by phone, and he had multiple discussions with the then-President and senior officials at the White House and National Security Council about organizing a meeting with Sun and other PRC government officials.

“The filing of this suit – the first affirmative civil lawsuit under FARA in more than three decades – demonstrates the department’s commitment to ensuring transparency in our democratic system,” said Assistant Attorney General Matthew G. Olsen of the Justice Department’s National Security Division. “Where a foreign government uses an American as its agent to influence policy decisions in the United States, FARA gives the American people a right to know.”

That the DOJ filed the first affirmative civil lawsuit in more than 30 years under the Foreign Agents Registration Act is a clear sign of stepped-up enforcement efforts of the 1938 law, which obliges economic and political agents who operate and exert influence on U.S. soil on behalf of foreign governments and quasi-governmental groups to register and update their registrations regarding each foreign client.

But the action should not come as a surprise, not least in light of tense relations between the United States and China. Two years ago, then-Attorney General William Barr [warned U.S. companies and executives](#) that advocating on behalf of Chinese government interests may violate FARA requirements.

“You should be alert to how you might be used, and how your efforts on behalf of a foreign company or government could implicate the Foreign Agents Registration Act,” Barr said. “FARA does not prohibit any speech or conduct. But it does require those who are acting as the ‘agents’ of foreign principals to publicly disclose that relationship and their political or other similar activities by registering with the Justice Department, allowing the audience to take into account the origin of the speech when evaluating its credibility.”

Just over six months ago, [Reuters reported](#) that the Chinese embassy in Washington, D.C. had sent letters to American executives, urging them to lobby against bills seeking to enhance U.S. economic competitiveness. The letters explicitly asked U.S. companies to oppose specific legislation, which one of Reuters' sources noted was “an outright ask by a foreign government,” highlighting the implications for FARA.

Are you working on behalf of a “foreign principal”?

You may not consider yourself a traditional lobbyist. Perhaps you only consider yourself an advisor, a consultant, or “just” a lawyer working on behalf of a client. Whatever your role, if you are involved with a foreign government or “any faction or body of insurgents within a country assuming to exercise governmental authority,” then you need to carefully look at the FARA criteria.

The term “foreign principal” generally refers to a government of a foreign country or a foreign political party, but it also includes any faction or body of insurgents within a country exercising governmental authority, whether or not that group is recognized by the United States as a legitimate government over legitimately-controlled territory. A foreign principal also includes a partnership, association, organization, or other combination of persons having its principal place of business in a foreign country. Nation-states, government entities, government officials, political parties, ousted dictators in exile, guerilla groups, and for-profit and nonprofit entities owned by any of the foregoing all fit into the definition of a foreign principal.

Are you engaging in “political activities” or will you act as “public relations counsel” or a “political consultant”?

“Political activities” means any activity the DOJ believes will influence or is intended to influence any U.S. agency or official or any section of the public within the United States. “Public relations counsel” refers to consulting with the foreign principal on how to sway public relations. Political consultants generally provide guidance on how to navigate interactions with state or federal legislative or executive branch members. The key is whether you are trying to sway U.S. government officials or U.S. voters. If you are only helping your client to engage with non-U.S. political actors and voters, then you may not be engaging in political activities or acting as public relations counsel or a political consultant for FARA registration purposes.

Who or what needs to register under FARA?

The business entity engaged on behalf of the foreign principal needs to file a primary registration statement, and each individual involved in performing political activities or acting as public relations counsel or a political consultant on behalf of the foreign principal needs to file a short form registration statement under the primary registration statement. This includes employees and contractors of the FARA registrant entity. If the work on behalf of the foreign principal is being performed solely by an individual as an agent, representative, employee, servant, or in any other capacity at the request or under the direction of a foreign principal, that individual needs to file a primary registration. Keep in mind that FARA registration only applies to actors engaging in political activities or acting as public relations counsel or a political consultant in the United States.

The various relevant registration documents can be found [here](#), all of which are filed electronically [here](#) and become public records (including your engagement letter and your fees actually received).

What is the FARA filing process?

Registration Statement – This is the primary registration form that must be filed by each foreign agent. The form centers on the registrant (the foreign agent) and not the foreign principals the foreign agent represents, though the foreign agent is responsible for reporting information on its foreign principal clients. The information required is not overwhelming, but this form and the following forms have some nuance to them, and you need to know exactly what actions you will be taking on behalf of your foreign principals so that you can describe them accurately and consistently across all the forms.

Exhibit A – This contains information on the foreign principal you represent. If you represent multiple foreign principals, you must file one Exhibit A for each of them.

Exhibit B – You attach your written engagement letter with the foreign principal to this form, and if you do not have a written engagement letter, you need to describe the arrangement. You also need to describe your activities on behalf of the foreign principal, which includes determining whether your activities constitute “political activities,” meaning any activity that you believe will or is intended to influence any U.S. “agency or official” or “any section of the public within the United States.” If you are only helping the foreign principal engage with non-U.S. political actors, then you may not be engaging in political activities. You still need to register if you are acting as public relations counsel or political consultant to the foreign principal, both of which are broad categories.

Exhibit C – No printed form is provided, but you are required to provide a copy of your charter documents and bylaws. To a corporate lawyer, the request of “bylaws” seems unnecessarily narrow and should include shareholder agreements and operating agreements to provide a full view into how decisions are made within your company and who are the key players. But for now, you only need to provide articles and bylaws if you are a corporation and only the certificate or articles of formation if you are an LLC (and nothing if you are a partnership that has not filed a certificate or articles of formation).

Amendment to Registration Statement – If the attorney general's office requires you to make changes after submitting the Registration Statement, you use this form. You are also responsible to use this form to update any information that becomes inaccurate after you file the Registration Statement, including minutiae like the list of employees, contractors, etc. working on each project and if your activities on behalf of the foreign principal differ from those initially reported on the Registration Statement.

Short Form Registration Statement – This should be filled out and signed by every individual and entity that is a partner, director, or officer in your business, along with each employee, agent, consultant, or subcontractor involved in the work on behalf of the foreign principal.

Supplemental Statement – This is a detailed form like the initial Registration Statement, and you must file this every six months for the duration of your registration under FARA. It is used to report any changes to the Registration Statement. You are also required to file this statement within 30 days after your representation of the foreign principal has been terminated, including to indicate that you are no longer required to register under FARA.

What are the penalties for non-compliance with FARA registration?

Penalties for non-compliance with FARA registration can be significant, especially if those activities involve hot-button topics and unpopular U.S. adversaries. The punishments and settlements made public by the DOJ range from probation to months or years of prison time, to disgorgement of fees received from the foreign principal, with the worst punishments being assessed against individuals and businesses that made false statements in the registration process or to investigators trying to ascertain whether FARA violations occurred.

Whether you are working on behalf of official or quasi-official clients from China, Russia, Iran, India, Spain or somewhere else, you need to assess whether your activities necessitate registration under FARA. Registration applies to those representing friends and foes, but foes particularly draw popular ire and DOJ scrutiny.

A final note

During the time when Steve Wynn is alleged to have operated as an unregistered foreign agent for China, he also was one of four Republican National Committee finance chairs. One of the others was Elliott Broidy, who in 2020 pleaded guilty to conspiring to violate foreign lobbying laws; he worked to win benefits for Chinese and Malaysian interests from the Trump administration.

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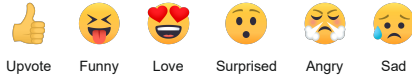
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