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Lobbying Rules: Foreign Agents Registration Act

Various federal statutes and congressional rules impose extensive disclosure requirements on lobbying activities by “foreign agents” and “foreign principals” as well as restrictions on foreign nationals making campaign contributions and paying for gifts and travel for federal officials.

Two statutes regulate the disclosure of lobbying activity by foreign principals and foreign agents: The Foreign Agents Registration Act (FARA)¹ and the Lobbying Disclosure Act (LDA).² FARA covers lobbying activity by all foreign agents and foreign principals, but the law allows foreign agents who lobby on behalf of foreign business interests the option of registering under the less restrictive LDA. Other federal statutes, such as the Federal Elections Campaign Act and the Ethics in Government Act of 1978, restrict foreign nationals from making campaign contributions or buying gifts for government officials.

The Foreign Agents Registration Act was the first attempt at major lobbying reform at the federal level. FARA’s primary purpose was to limit the influence of foreign agents and propaganda on American public policy. The law arose specifically in response to a perceived propaganda drive by Adolph Hitler to fan the Nazi movement in the United States. Though there was no explicit evidence, President Franklin Roosevelt and many members of Congress believed that Hitler was helping finance the Nazi movement.

FARA requires every agent representing a foreign principal to register with the Department of Justice and file disclosure forms outlining the purpose of representation, income and expenditures by the agent on behalf of the foreign principal. FARA requires only registration of foreign agents and disclosure of their activities. It does not attempt to restrict the behavior or lobbying activities of foreign agents, but other statutes do.

Definition of Foreign Principals

All foreign governments are explicitly defined as foreign principals, but the term also covers:

- a) Foreign political parties;
- b) A person or organization based outside the United States, except U.S. citizens;
- c) A partnership, association, corporation, organization, or other combination of persons inside the United States that is organized under the laws of a foreign country; and
- d) A partnership, association, corporation, organization, or other combination of persons inside the United States that has its principal place of business in a foreign country.³

Definition of Foreign Agents

An agent of a foreign principal (a foreign agent) is any individual (agent, representative, employee, servant) or organization that acts at the order, request, or under the direction or control of a foreign principal, or whose activities are directed by a foreign principal,⁴ who:

- a) Engages in political activities for or in the interests of such foreign principal. The term “political activities” means any activity that the person engaging in believes will in any way influence any agency or official of the United States government or any section of the public with reference to U.S. domestic or foreign policies or with reference to the political or public interests of a foreign principal.⁵
- b) Acts in a public relations capacity for a foreign principal. The term also includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, economic, cultural, or other benefits of any foreign principal.
- c) Solicits or dispenses any thing of value within the United States for a foreign principal.
- d) Represents the interests of a foreign principal before any agency or official of the U.S. government.

FARA exempts several categories of foreign agents from the registration requirement⁶:

- a) Diplomats and officials of foreign governments, and their staffs, if properly recognized by the U.S. Department of State;
- b) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the interests of the United States;
- c) Any person engaging in other activities not serving predominantly a foreign interest;
- d) Any person engaging in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering;
- e) Any person engaging only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;
- f) Lawyers engaged in legal representation of foreign principals in the courts or similar type proceedings, so long as the attorney does not try to influence policy at the behest of his client; and, most importantly,

- g) **Any agent who is engaged in lobbying activities on behalf of a foreign business interest and is registered under the Lobbying Disclosure Act.**⁷

Finally the term “foreign agent” does not include American newspapers or other media covering activities of foreign principals so long as the media are at least 80 percent owned by American citizens, and their directors and officers are also citizens of the United States.⁸

Registration of Foreign Agents

FARA requires every agent of a foreign principal who is not covered by the exemptions listed above to register with the Department of Justice within 10 days of becoming such an agent.⁹ Any foreign agent engaged in political or para-military activity, or intending to overthrow the government, must also register under FARA.¹⁰ Additionally, FARA requires registration of persons who have received instruction in espionage, counterespionage or sabotage on behalf of a foreign country or political party.¹¹

Registration and Disclosure Records

The original registration statement and semi-annual disclosure reports must include the following:

- a) Registrant’s name and residence and business addresses;
- b) Status of the registrant: if an individual, the individual’s nationality; if a partnership, the name, residence, and nationality of each partner and a copy of its articles of partnership; if an association, corporation or organization, the name, residence, and nationality of each director and officer and a copy of its charter, articles of incorporation, constitution, and bylaws;
- c) A comprehensive statement of the nature of the registrant’s business, including a complete list of employees and the terms of their work;
- d) Copies of any written agreement and the terms and conditions of each oral agreement with a foreign principal;
- e) The amount and date of funds received by the registrant within the preceding 60 days from a foreign principal, either as compensation or for disbursement; and
- f) Detailed information of all activities by the registrant – including the date and purpose of lobbying contacts – made on behalf of the foreign principal.

Regular Filing by Foreign Agents

Every agent of a foreign principal shall, within 30 days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplemental statement, that is open to public. FARA does not specify what information must be included in the supplemental

statement but leaves the details to the Attorney General. As of June 2005, the supplemental statement required foreign agents to disclose the following:

- a) Name, registration number, business address of registrant, any changes in residence address, citizenship and occupation for individuals and any changes in name, ownership and branch offices for organizations.
- b) Changes in partners, officers, directors and other officials of the registrant during the 6 month reporting period, and other relevant changes in personnel.
- c) List of foreign principals for whom the registrant provided services. A foreign agent must not only specify all foreign principals, but also describe their activities and services. For example: “The BCD lobbying firm continues to provide advice and assistance to the Philippine Ambassador. To that end, the BCD has worked to improve the exchange of information between the U.S. Congress and the Philippines, combat anti-Philippines lobbying and create a better environment to address the threat of terrorism.”
- d) Detailed diary of its political activities including attending public events, contacting Members of Congress or their staff, in person or by phone. For example: “June 20 contacted Bill Jackson, staff member of Congressman Peterson, attended American Philippine Council defense committee and other meetings.”
- e) Any money that has been received as a result of cooperation with a foreign principal during the reporting period. For example: “Date: 06/20/05; From Whom: Government of the Philippines; Purpose: Fees; Amount: \$300,000.00.”
- f) Any money that has been disbursed in connection with activity on behalf of a foreign principal. For example: “Date: 06/20/05; To Whom: The Philippine Group; Purpose: Fee sharing; Amount: \$175,000.00. Other Disbursements: Delivery charges: \$456.88.” Meals and entertainment expenditures should be specified separately. For example: “06/20/05 lunch with Mr. Brinkley, House staff (\$65.09).”
- g) Financial contributions made by a foreign agent to any political organization or candidate. For example: “John Preston – Date: 06/20/05; Amount: \$500; Political organization: Frank Ramirez Election Committee; Name of candidate: Congressman Ramirez.”
- h) Detailed information on the distribution of informational materials (propaganda).

Informational Materials

One of FARA’s principal purposes is to require that informational materials (sometimes referred to as propaganda) be conspicuously labeled with a statement that the material is paid for by a foreign principal, whose identity must be disclosed.¹² The agent must provide two copies of the materials to the Attorney General no later than 48 hours after distribution.

Violations of FARA

Failure to register, keep accounts, mark informational materials, and provide a congressional committee with a copy of the agent's most recent registration, as well as making a false statement or providing misleading information, are crimes. Any person who willfully violates provisions of FARA is punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.¹³ Any alien convicted of a violation of FARA shall also be subject to deportation.¹⁴ Unintentional violations of FARA may simply result in an order by the Attorney General to the foreign agent or foreign principal to remedy the situation.

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Endnotes

¹ 22 U.S.C. §611 *et. seq.*

² 2 U.S.C. 1601 *et. seq.*

³ 22 U.S.C. §611 (b).

⁴ 22 U.S.C. §611 (c).

⁵ 22 U.S.C. §611 (o).

⁶ 22 U.S.C. §613.

⁷ 2 U.S.C. §1601.

⁸ 22 U.S.C. §611 (d).

⁹ 22 U.S.C. §612 (a).

¹⁰ 18 U.S.C. §2386.

¹¹ 50 U.S.C. §851.

¹² 22 U.S.C. §614.

¹³ 22 U.S.C. §618 (a).

¹⁴ 8 U.S.C.A. §1221 *et seq.*