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Two Seyfarth Shaw attorneys discuss the recent uptick in activity relating to the Foreign Agents Registration Act as well as the introduction of legislation to strengthen FARA by Sen. Chuck Grassley, Chairman of the Senate Judiciary Committee. The authors suggest that FARA, once largely unenforced, could become an important and relatively easy-provable white collar crime used by prosecutors to convict those who work with, and for, foreign principals and governments.

Department of Justice & Congress Signal Possibility of Increased Foreign Agents Registration Act Enforcement in 2018 and Beyond



By ANDREW S. BOUTROS AND JOHN R. SCHLEPPENBACH

The Manafort Indictment

The Oct. 27, 2017, indictment of Paul Manafort sent reverberations through Washington, D.C., and not just because of Manafort's high-profile status in D.C. political and lobbying circles. Legal experts and savvy political actors alike expressed surprise to see charges brought under the Foreign Agents Registration Act (FARA), a little-used statute enacted in 1938 to combat the rise of Nazi propaganda activity in the United States. Indeed, in the nearly 50 years between 1966 and 2015, *only seven* criminal prosecutions have ever been brought under FARA, and *only one* of those resulted in a conviction at trial, while four resulted in pleas and an-

other two were dismissed. The charges against Manafort led to a substantial uptick of new corporate FARA filings with the Department of Justice's FARA Registration Unit of the Counterintelligence and Export Control Section in the National Security Division, which is responsible for the administration and enforcement of the Act. Specifically, since Special Counsel Robert Mueller started his probe in May 2017 through the present (March 2018), approximately 100 new registrants have filed under FARA. During that same time period one year earlier (May 2016 to March 2017), there were 58 new registrants. That's a year-over-year increase of approximately 75 percent of new FARA registrants.

Despite the historical lack of prosecutions, FARA's language brings a wide range of entities and individual within its scope. With certain exemptions, it requires *all agents* of foreign principals to file registration statements with the Attorney General within 10 days of becoming an agent, with periodic updates to follow. And, although someone working for a foreign principal may not necessarily realize he or she is an agent, both the terms "agents" and "foreign principals" are broadly defined. Specially, foreign principals include all foreign governments, political parties, people, and organizations. And agents encompass all those who:

- (1) engage in political activities in the United States,
- (2) act as public relations representatives,
- (3) solicit or dispense contributions or other things of value, or

(4) interact with a U.S. government agency on behalf of a foreign principal.

Thus, companies and individuals—particularly those in media—must pay particularly close attention to whether they may have FARA-filing responsibilities of which they have previously been unaware or lackadaisical.

Senate Judiciary Committee Chairman Introduces Legislation To Enhance FARA

There is yet another reason to believe that we may be entering into a “FARA renaissance,” so to speak. On Oct. 31, 2017, Sen. Chuck Grassley (R-Iowa) introduced the Disclosing Foreign Influence bill, S. 2039, which seeks to strengthen FARA. Among other things, the bill would give the Justice Department’s FARA Unit the power to issue civil investigative demands, including interrogatories, demands for document production, and demands for oral testimony. It would further direct the Attorney General to “develop and implement a comprehensive strategy to improve the enforcement and administration of” FARA, to be reviewed by the Inspector General and reported to Congress. Perhaps most significantly, the bill would remove one of FARA’s current exemptions, which allows agents for foreign entities to avoid the requirement to complete detailed FARA filings by instead filing an abbreviated form under the Lobbying Disclosure Act.

Senator Grassley’s bill follows a similar March 2017 bill introduced by Sen. Jeanne Shaheen (D-N.H.) to “preserve the integrity of American elections by providing the Attorney General with the investigative tools to identify and prosecute foreign agents who seek to circumvent Federal registration requirements and unlawfully influence the political process.” That earlier bill, the Foreign Agents Registration Modernization and Enforcement Act, S. 625, would also give the DOJ civil investigative demand authority. The introduction of the two bills suggests that there is at least some degree of bipartisan support for increased enforcement of FARA.

Parting Thoughts

In this environment, persons and companies that do business internationally would do well to consult with experienced counsel about the complicated issues of FARA applicability and the potentially intricate FARA filing requirements. FARA appears poised to shake off its long period of dormancy and become a new enforcement tool that businesses and their executives must account for and fully comply with. Failure to do so may result in federal investigation, if not prosecution and conviction.

FARA Fact Sheet

The FARA (22 U.S.C. § 611 et seq.), has been a focus of renewed attention lately with its role in the high-profile indictment of longtime political consultant and lobbyist, Paul Manafort. Though prosecutions under FARA have historically been rare—indeed, only seven criminal cases were charged in the nearly 50-year period between 1966 and 2015 — they may receive new attention from the Department of Justice going forward.

As such, persons and businesses would be well advised to consider the following facts about FARA.

Scope

Subject to certain exemptions discussed below, FARA applies to all agents of foreign principals in the United States, subject to certain exemptions discussed below. “Foreign principals” include all foreign governments, political parties, people, and organizations. “Agents” include those who:

- (1) engage in political activities in the United States,
- (2) act as public relations representatives,
- (3) solicit or dispense contributions or other things of value, or
- (4) interact with a U.S. government agency on behalf of a foreign principal.

Principal Requirements

FARA requires agents to file a registration statement and several detailed exhibits with the Attorney General within 10 days of becoming an agent of a foreign principal and before acting on behalf of the principal. Thereafter, agents are required to file supplements to their registration statements every six months, and to amend their original registration statements to the extent they become inaccurate. In addition, agents must file any informational materials they disseminate on behalf of the foreign principal with the Attorney General within 48 hours.

Exemptions

Certain agents of foreign principals are exempted from its filing requirements, namely:

- Diplomatic or consular officers and their staff members.
- Officials of foreign governments.
- Those engaged only in (1) private nonpolitical activities furthering trade or commercial interests; (2) other activities not serving predominantly a foreign interest; or (3) the soliciting or collecting of funds and contributions in the U.S. only for medical aid and assistance.
- Those engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuit or the fine arts.
- Those serving government of foreign countries the defense of which the President deems vital to the defense of the United States.
- Persons qualified to practice law.
- Lobbyists registered under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 et seq.

Penalties

FARA violations are punishable as criminal felonies. Specifically, anyone who willfully violates any provision of FARA may be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both.

About the Authors

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prosecutions spanned the globe and are regarded as among the most extensive and complex multi-district, international corporate fraud and cybercrime cases in the nation's history. In total, Boutros coordinated efforts with international law enforcement authorities in more than 20 countries and charged and prosecuted crimes involving some \$500 million in losses, proceeds, and judgments, while also investigating additional criminal conduct in the several billions of dollars. Today, Boutros represents clients in their most sensitive and important white collar matters, internal and cross-border investigations, including under the Foreign Corrupt Practices Act, and complex litigations. He also provides strategic counseling and advice to clients in a va-

riety of industries and across subject matters, including on matters of FARA compliance.

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