

# 美国谨防寻求美国支持的外国公司

## Beware Foreign Companies Seeking U.S. Support

### 美国正加强其对外国利益的监管

U.S. is increasing its enforcement to monitor foreign interests.

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- 美国司法部（DOJ）近期宣布将加强对于《外国代理人登记法》（FARA）的执行。该法要求，凡是在政治活动中代表外国利益的美国人士都要进行公示登记和报告。

*The U.S. Department of Justice (DOJ) recently announced increased enforcement of the Foreign Agents Registration Act (FARA), which requires public registration and reporting by U.S. persons engaged in political activities on behalf of foreign interests.*

- 《外国代理人登记法》的适用范围广泛而模糊不清。若未能遵守该法，美国“代理人”将遭受包括刑事责任在内的严重处罚，同时也会对该等美国人士的外国客户造成声誉损害。

*FARA's coverage is both broad and ambiguous, and the failure to comply can result in significant penalties for the U.S. "agent," including criminal enforcement, as well as reputational damage to the foreign client of the U.S. person.*

- 非国有公司的政治顾问可以适用一项例外规定，即该等顾问可以根据另一规定更为简明的法律《游说信息披露法》（LDA）进行登记。非美国公司应该确认其美国顾问（包括咨询顾问、政府说客、律师及其他）严格遵守《外国代理人登记法》的规定或者满足该法的豁免条件之一（尤其是《游说信息披露法》）。

*Political consultants for companies not government-owned can take advantage of an exception where the consultant registers under a different, less burdensome law, the Lobbying Disclosure Act (LDA). Non-U.S. companies should confirm that their U.S. advisors (including consultants, lobbyists, lawyers, and others) are in compliance with FARA or qualify for one of the exemptions, especially LDA.*

1983年制定的《外国代理人登记法》是一项试图确保在美国以“政治或准政治身份”代表外国实体利益的人士向美国政府披露其自身活动的信息披露法案。在《外国代理人登记法》规定下，除非适用一项豁免情况，任何“外国委托人的代理人”都需要在美国司法部进行登记，且每六个月提交一次详细报告。

Enacted in 1938, FARA is a disclosure statute that seeks to ensure that persons representing the interests of foreign entities in a “political or quasi-political capacity” in the United States disclose their activities to the U.S. government. Under FARA, unless an exemption applies, any “agent of a foreign principal” is required to register with DOJ and file detailed reports every six months.

## 《外国代理人登记法》近期的发展 Recent Developments under FARA

过去很少有因违反《外国代理人登记法》而引发的刑事案件。然而，在美国针对俄罗斯对美政治干预的调查已经引发了多项《外国代理人登记法》项下的执法行为。其中最受瞩目的和解案件便是最近世达律师事务所（Skadden Arps Slate Meagher & Flom LLP）因其律师未将其代理乌克兰政府的游说工作进行登记，而向美国司法部追缴一笔460万美元的赔偿金以及对其前合伙人的起诉的案件。这一针对美国顶级律师事务所进行处罚引起了更多对《外国代理人登记法》的关注，同时也提示了公司需要审阅可能涉及该法案所规定的“政治活动”的其与美国律所和顾问之间的聘用关系。

Historically, there have been few criminal enforcement cases under the FARA. However, the U.S. investigation of Russian influence in U.S. politics has spun off several FARA enforcement actions, with the most high-profile settlement being the recent Skadden Arps Slate Meagher & Flom LLP's \$4.6 million disgorgement deal with the DOJ and recent indictment of its former partner, as a result of its lawyers' failing to register their lobbying work for the Ukrainian government. This enforcement case against a high-profile U.S. law firm has brought increased attention to FARA and highlights the need to review engagements with U.S. law firms and consultants that may potentially involve "political activities" as defined in the statute.

《外国代理人登记法》管理活动范围为非商业性质或由大使馆官员做出的大多数游说、宣传、公共关系和为“外国委托人”募集资金的行为。法律规定要求代理人定期对其个人身份、代理关系、近期活动、收入和支出进行公开披露。基于这些人士的外国代理人身份，相关规定信息的披露将有助于美国政府和美国人民评估该等人士的报告和活动。新闻媒体将会是该法案所要求披露信息的最大使用者，并将会对披露信息进行进一步的报道。

FARA covers most lobbying, advertising, public relations, and fundraising for "foreign principals," that is not of a commercial nature, or performed by embassy officials. The statute requires agents to make periodic public disclosure of their identities, agency relationships, activities, receipts and disbursements. Disclosure of the required information facilitates evaluation by the government and the American people of the statements and activities of such persons in light of their status as foreign agents. The news media are the greatest users of the information filed under the Act, and give it further publicity.

《外国代理人登记法》的行政执法由美国司法部国家安全局反情报和出口管制部门下的外国代理人登记处负责。

The FARA Registration Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) is responsible for the administrative enforcement of the Act.

## 《外国代理人登记法》中所涉及的《游说信息披露法》豁免条款 The LDA Exemption from FARA

《外国代理人登记法》所规定的登记和报告十分繁琐，然而该法项下豁免使得信息披露人可以适用较为简便的《游说信息披露法》的报告规定。《游说信息披露法》要求由联邦说客进行登记和报告。当代理人所代理的实体为非国有的外国公司时，可豁免其不在《外国代理人登记法》要求下进行登记，而是在《游说信息披露法》要求下登记。只要其外国委托人不是外国政府或者外国政治团体，美国代理人可以通过依据《游说信息披露法》更为简单的合规要求进行登记和注册，将其合规负担降至最小。

FARA registration and reporting can be burdensome; however, an exemption in the statute permits a filer to comply using less onerous reporting requirements under the LDA. The LDA requires registration and reporting by federal lobbyists. In cases where agents represent entities such as foreign corporations that are not government-owned, there is an exemption from registration under FARA if one instead registers under the LDA. By registering and reporting under the simpler compliance requirements of the LDA, a U.S. representative can minimize compliance burdens under FARA as long as the foreign principal is not a foreign government or political party.

## 《游说信息披露法》适用范围

### **LDA Coverage**

若在任何三个月期间内，当一个人的服务包括因游说活动一次及一次以上联系受该法管制的联邦官员，个人的有偿游说活动构成以代表其雇主（或顾客）名义服务时间的20%（或大于20%）时，该个人应当被认定为《游说信息披露法》项下联邦说客。

An individual will qualify as a federal lobbyist under the LDA if the individual's services include more than one lobbying contact with a covered federal official and the individual's compensated lobbying activities constitute 20 percent or more of his or her services' time on behalf of his or her employer (or client) during any three-month period.

根据《游说信息披露法》的制定目的，“游说活动”应当包括游说联系以及任何支持该等游说联系的行为，包括活动的准备和计划、在准备期间为了联系和与他人的游说活动进行配合所进行的研究和其他背景调查工作。“游说联系”包括任何代表公司做出的通过口头、书面或者电子沟通同受该法管制的行政机关或者立法机关官员沟通下列事项：

For purposes of the LDA, “lobbying activities” include lobbying contacts and any efforts in support of those contacts. This includes preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others. A “lobbying contact” includes any oral, written or electronic communication to a covered executive or legislative branch official that is made on behalf of the company with regard to:

- (i) 制定、修订或通过联邦法律（包括立法草案）；  
the formulation, modification, or adoption of Federal legislation (including legislative proposals);
- (ii) 制定、修订或通过联邦规则、法规、行政令或者其他美国政府项目、政策或者立场；  
the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
- (iii) 联邦项目或政策的管理或执行（包括联邦政府合同、拨款、贷款、批准或许可的谈判协商、授予或管理）；或  
the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
- (iv) 需经美国参议院确认的某项职位的个人的提名或通过。  
the nomination or confirmation of a person for a position subject to confirmation by the Senate.

“游说联系”一词存在某些例外，如在某一委员会前的作证或提交供列入听证会公开记录的内容。

There are some exceptions to the term “lobbying contact,” such as testimony given before a committee or communications submitted for inclusion in the public record of a hearing.

## 《游说信息披露法》有关登记和披露的相关规定

### **Registration and Disclosure under LDA**

在达到登记门槛后的45日之内，雇佣内部说客的组织必须提交登记说明。若一个组织每一季度用于游说活动的总支出不超过或预计将不会超过一万三千美元（\$13,000）的，该组织将免于登记。

Organizations employing in-house lobbyists must file a registration statement within 45 days of the thresholds being met. An organization is exempt from registration if its total expenses for lobbying activities do not exceed and are not expected to exceed \$13,000 during a quarterly period.

不雇佣内部说客且仅仅接受联邦游说机构服务的组织或公司不承担披露义务。游说机构应当登记和列明其所服务的公司和组织客户名单。一个游说机构每一季度为某一特定客户提供游说服务的收入总额不超过或预计将不超过三千美元（\$3,000）的，该游说机构针对这一特定顾客的服务将免于登记。

An organization or company that does not employ in-house lobbyists, and merely retains services of a federal lobbying firm, does not incur any disclosure obligations. The lobbying firm is required to register and list the organization or company as its client. A lobbying firm is exempt from registration for a particular client if its total income from that client for lobbying activities does not exceed and is not expected to exceed \$3,000 during a quarterly period.

除提交登记说明外，《游说信息披露法》还要求季度游说活动报告及半年度游说贡献报告的提交。这些报告应同时以电子方式递交给美国众议院书记官和参议院秘书长。半年度报告要求提交人在伪证罪相关惩罚拘束下证明，提交人没有故意违反美国参众两院关于礼品和旅行的规定。

In addition to the submission of the registration statement, the LDA requires the filing of quarterly lobbying activity reports and semi-annual lobbying contribution reports. These reports are submitted electronically with the Clerk of the House of Representatives and the Secretary of the Senate, which is completed simultaneously. The reports filed semi-annually require the filer to certify under penalty of perjury that the filer has not knowingly violated the gift and travel provisions in the Rules of both the House of Representatives and the Senate.

### 给非美国客户的建议

#### **Recommendations for Foreign-based Clients**

考虑到《外国代理人登记法》的广泛性和模糊性，以及美国司法部近期加强执法的趋势，聘请美国顾问的非美国公司可能会面临其美国顾问出于《外国代理人登记法》合规问题而所采取的多种不同做法。为避免令人不愉快的意外发生，请确保您自身了解并熟悉《外国代理人登记法》和《游说信息披露法》的要求。非美国客户应当要求其聘请的美国顾问确认其符合《外国代理人登记法》和《游说信息披露法》的要求。

Taking into consideration FARA's breadth and ambiguity, and DOJ's recent new emphasis on enforcement, non-U.S. companies using U.S. advisors may face different approaches by its U.S. advisors who are concerned about their FARA compliance. Be prepared and familiarize yourself with the requirements under FARA and the LDA to avoid unpleasant surprises. Foreign clients should seek a confirmation of FARA or LDA compliance by their U.S. advisors.