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Foreign Agents Registration Act (FARA) Again in the Spotlight: New York Times Examines Foreign Funding and Think Tanks

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This weekend, the New York Times ran a [lengthy investigative report](#) on foreign government donations to U.S. think tanks. The story alleged that the **foreign governments bought influence** and paid for advocacy by some of the nation's most respected research institutions. The article outlined contributions from Norway, UAE, Qatar, Japan, and others to think tanks including the Brookings Institution, the Center for Strategic and International Studies, the Atlantic Council, and the Center for Global Development.

For a few years, we have noted – and been tracking for many clients – the growing enforcement and interest in the **Foreign Agents Registration Act**. This weekend's Times story focused on think tanks, but the FARA issues it highlighted are equally relevant to universities, social welfare organizations, and others that accept foreign government funding. We have also seen PR and consulting firms [confront FARA issues](#) related to their clients outside the United States.

FARA is an important consideration for any advocacy organization that is closely aligned with a foreign government, country, or ethnicity. (One of the leading FARA cases, for example, involved an Irish newspaper and advocacy organization.) Even corporations have run into FARA. Companies with foreign affiliates or U.S. subsidiaries of a foreign parent with close ties to the home country government can easily trigger FARA inadvertently.

Notably, the Times article alleged that the think tanks' arrangements with foreign governments may have violated the law:

[T]he tightening relationships between United States think tanks and their overseas sponsors could violate the Foreign Agents Registration Act.... The law requires groups that are paid by foreign governments with the intention of influencing public policy to register as "foreign agents" with the Justice Department.

Unfortunately (or fortunately, for the think tanks), that's not quite a fair paraphrasing of the law. FARA is a complicated and arcane statute – its application can swing quickly between very different outcomes, depending on the specific factual situation involved. Applying the law requires examining the relationship between the U.S. entity and the foreign government, the specific activities undertaken, and even the physical location of the activities, among other considerations.

In our experience – from working with think tanks and foreign donors – most organizations seek to avoid triggering FARA by specifying that the think tank is independent and not acting on behalf of the foreign donor. These legal considerations are usually specified clearly in the grant documents. This posture is natural for respectable think tanks – independence is central to their reputations and credibility.

Because FARA is targeted at "agents" of foreign entities, the registration requirement is generally only triggered when the agent operates at the "direction or control" of a foreign entity. But the language of FARA is very sweeping and the statute encompasses those who act at the "request" of a foreign principal or those whose



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activities are “financed, or subsidized in whole or in major part,” by a foreign entity.

As a result, it is very easy to trigger the statute unintentionally unless FARA considerations are taken into account when negotiating the grant and drafting the contracts or grant documents. Even then, the parties must remain vigilant throughout the relationship to avoid crossing the line and triggering the statute, notwithstanding any legal language in a carefully drafted document.

Although FARA is relatively esoteric, Covington’s experience in this area spans more than 50 years. (One of the leading FARA cases is Attorney General v. Covington & Burling, where we established that the attorney-client privilege applies to FARA.) We also defended a consulting firm targeted in the Department of Justice’s largest FARA investigation of recent memory. We have advised a number of think tanks and other organizations regarding grant agreements with foreign governments, as well as foreign government instrumentalities considering grants to think tanks.

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