

Position Statement – U.S. Foreign Agents Registration Act Reform

Executive Summary

Our company supports efforts by the United States Congress and the Administration to reform the Foreign Agents Registration Act (FARA) and enhance compliance measures for persons lobbying on behalf of a foreign government, government entity, or political party. However, any such reform must differentiate between a foreign government and a foreign company and maintain an exemption for commercial purposes.

Why It Matters

In 1938, the United States enacted FARA, which required that agents representing the interests of foreign governments register with the U.S. Attorney General regarding lobbying activities and associated finances. The law has since been amended to apply to any person acting on behalf of a “foreign principal” to, among other things, influence U.S. policy or public opinion.¹

In 1995, Congress passed the Lobbying Disclosure Act (LDA), which moved private sector lobbying on behalf of foreign principals that are not foreign governments or foreign political parties from the purview of FARA to the LDA. This change called for most lobbying activities on behalf of subsidiaries of foreign businesses to be disclosed under the procedures outlined by the LDA, following the same rules and guidelines that apply to companies headquartered in the United States.

In September 2016, the Inspector General for the Department of Justice (DOJ) issued a report suggesting that FARA has not been adequately enforced and encouraged DOJ’s National Security Division to adopt a more comprehensive and rigorous FARA enforcement strategy. This report has raised interest in this issue among federal lawmakers, and various pieces of legislation have been proposed to strengthen the U.S. government’s enforcement of FARA. However, some of these bills have proposed eliminating the exemption that allows U.S. subsidiaries to disclose their lobbying activities through the LDA.

Our Position

We support the U.S. government’s mission of reforming FARA and efforts to require the disclosure of activities for persons lobbying on behalf of a foreign government, government entity, or political party. However, it is essential that any FARA reform continue to differentiate between a foreign government and a foreign company.

- We strongly believe that neither foreign companies nor their U.S. subsidiaries should be considered foreign agents.
- U.S. subsidiaries of foreign companies collectively employ over 7.4 million Americans, including more than 13,000 people employed by our company in the U.S.
- These companies also routinely invest in the United States by building facilities, purchasing equipment, hiring workers, and developing products and services that are sold to U.S. consumers as well as exported internationally.
- The required disclosures resulting from registering as a foreign agent would impose an undue burden on foreign businesses and their U.S. subsidiaries and place them at a competitive disadvantage.
- We support maintaining an exemption in FARA for commercial purposes so that the law is not misappropriated to include foreign subsidiary businesses.
- Our company is neither owned nor controlled by a government, government entity, or political party. 30% of our total capital is publicly traded, while the remainder is held by

¹ Covington & Burling LLP. (July 26, 2019). The Foreign Agents Registration Act (“FARA”): A Guide for the Perplexed. Retrieved from https://www.cov.com/-/media/files/corporate/publications/2018/01/the_foreign_agents_registration_act_fara_a_guide_for_the_perplexed.pdf





the general partner E. Merck KG, Darmstadt, Germany (the holding company for our company's founding family).

We fully support the reporting of government affairs activities for U.S. subsidiaries of foreign companies and believe the LDA and relevant state measures currently in place provide an appropriate level of scrutiny for all companies regardless of whether their headquarters are located domestically or abroad.

About Merck KGaA, Darmstadt, Germany

Merck KGaA, Darmstadt, Germany, a leading science and technology company, operates across healthcare, life science and Merck KGaA, Darmstadt, Germany, a leading science and technology company, operates across healthcare, life science and electronics. Around 58,000 employees work to make a positive difference to millions of people's lives every day by creating more joyful and sustainable ways to live. From advancing gene editing technologies and discovering unique ways to treat the most challenging diseases to enabling the intelligence of devices – the company is everywhere. In 2020, Merck KGaA, Darmstadt, Germany, generated sales of € 17.5 billion in 66 countries.

The company holds the global rights to the name and trademark "Merck" internationally. The only exceptions are the United States and Canada, where the business sectors of Merck KGaA, Darmstadt, Germany operate as EMD Serono in healthcare, MilliporeSigma in life science, and EMD Electronics. Since its founding 1668, scientific exploration and responsible entrepreneurship have been key to the company's technological and scientific advances. To this day, the founding family remains the majority owner of the publicly listed company. For more information about Merck, KGaA, Darmstadt, Germany, visit www.emdgroup.com.

