



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA EMAIL AND FIRST CLASS MAIL

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AUG 01 2019

RE: MUR 7624
Alter City Group Holdings Limited

Dear Mr. Torres:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Alter City Group Holdings Limited, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission, on July 25, 2019, found reason to believe that Alter City Group Holdings Limited violated 52 U.S.C. § 30121(a)(1)(A) by making foreign national contributions. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law. Enclosed is a conciliation agreement for your consideration.

[REDACTED]

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, or epaoli@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Alter City Group Holdings Limited MUR 7624

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2).

II. FACTS

The Commonwealth of the Northern Mariana Islands ("CNMI") is a commonwealth government comprised of 14 islands in the West Pacific. Following World War II, the United Nations established the "Trust Territory of the Pacific Islands," which included the CNMI, the Republic of Palau, the Marshall Islands, and the Federated States of Micronesia. The United States initially functioned as a trustee over the Trust Territory, with the CNMI eventually seeking to form its own relationship with the United States, apart from the other islands. Negotiations between U.S. and CNMI representatives resulted in the creation of a governing document, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the "Covenant"), which, *inter alia*, sets forth the applicability of U.S. laws to the CNMI. CNMI voters adopted the Covenant in 1975, and it was signed into law on March 24, 1976.¹

¹ *See* Covenant, 48 U.S.C. § 1801 et seq.

1 The Covenant establishes that “[T]he CNMI is under the sovereignty of the United States
2 but retains ‘the right of local self-government.’”² In relevant part, section 502(a) provides that
3 “laws of the United States in existence on the effective date of this Section and subsequent
4 amendments to such laws will apply to the Northern Mariana Islands, except as otherwise
5 provided in this Covenant.”³ The Covenant does not exclude the Federal Election Campaign Act
6 of 1971, as amended (“Act”), and states that the CNMI will be subject to U.S. laws “which are
7 applicable to Guam and which are of general application to the several States as they are
8 applicable to the several states.”⁴

9 Alter City Resort is a project on Tinian Island in the CNMI.⁵ It is owned by Alter City
10 Group Holdings Limited (“Alter City”), which is allegedly a foreign national and which
11 submitted its Response on letterhead from Alter City Group indicating registration in the British
12 Virgin Islands and a principal place of business in Macau.⁶

13 **III. LEGAL ANALYSIS**

14 The Act and Commission regulations prohibit any “foreign national” from directly or
15 indirectly making a contribution or donation of money or other thing of value, or an expenditure,

² *CNMI v. United States*, 399 F.3d 1057, 1058 (9th Cir. 2005) (explaining that the United States has paramount interest in submerged lands adjacent to CNMI) (citations omitted).

³ Covenant, § 502.

⁴ *Id.* § 502(a)(2).

⁵ See ALTER CITY GROUP HOLDINGS LIMITED, <http://www.altercitygroup.com/en/col.jsp?id=111> (last visited May 17, 2019).

⁶ See Alter City Resp. (July 19, 2018) (company letterhead). In a supplemental response, Alter City asserts that Alter City Group, Inc., is incorporated in CNMI but neither explains the relationship between these entities nor denies the foreign national status of Alter City Holdings Limited. See Alter City Limited Supp. Resp. at 2 (Oct. 22, 2018).

independent expenditure, or disbursement, in connection with a federal, state, or local election.⁷

The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."⁸

In the Bipartisan Campaign Reform Act of 2002 ("BCRA"),⁹ Congress expanded the Act's foreign national prohibition to expressly prohibit "donations" in addition to contributions. It also codified the Commission's longstanding interpretation of the prohibition, expressly applying it to state and local elections as well as to federal elections.¹⁰

Commission regulations implementing the Act's foreign national prohibition provide:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation . . . with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements. . . .¹¹

⁷ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

⁸ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

⁹ Pub. Law 107-155, 116 Stat. 81 (Mar. 27, 2002).

¹⁰ *See* 52 U.S.C. § 30121(a); Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,940 (Nov. 19, 2002) ("Prohibitions E&J"); *see also* Advisory Op. 1999-28 (Bacardi-Martini USA) at 2 (quoting *United States v. Kanchanalak*, 192 F.3d 1037 (D.C. Cir. 1999) (recognizing that the Commission had "consistently interpreted . . . since 1976" the foreign national prohibition to extend to state and local elections)).

¹¹ 11 C.F.R. § 110.20(i). The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee." Prohibitions E&J, 67 Fed. Reg. at 69946; *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and

The regulations also provide that no person shall “knowingly provide substantial assistance” in the solicitation, making, acceptance, or receipt of a prohibited foreign national contribution or donation, or the making of a prohibited foreign national expenditure, independent expenditure, or disbursement.¹²

The Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company’s decisions to make contributions or in the management of its separate segregated fund,¹³ or where foreign funds were used by a U.S. subsidiary of a foreign corporation to make contributions or donations in connection with U.S. elections.¹⁴

concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

¹² 11 C.F.R. § 110.20(h). The Commission has explained that substantial assistance “means active involvement in the solicitation, making, receipt or acceptance of a foreign national contribution or donation with an intent to facilitate successful completion of the transaction.” Assisting Foreign National Contributions or Donations, 67 Fed. Reg. 66928, 66945 (Nov. 19, 2002). Moreover, substantial assistance “covers, but is not limited to, those persons who act as conduits or intermediaries for foreign national contributions or donations.” *Id.* at 66945.

¹³ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company’s board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company’s election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. (“APIC”)) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute). The Commission has specifically determined that “no director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making . . . proposed contributions.” Advisory Op. 1989-20 (Kuilima) at 2.

¹⁴ *See* MUR 6203 (Itinere North America).

A. Jurisdiction

Section 502 of the Covenant provides that the CNMI is subject to laws “in existence on the effective date of this Section and subsequent amendments to such laws . . . which are applicable to Guam and which are of general application the several States as they are applicable to the several States.”¹⁵ The Act, including the provision containing the prohibition on foreign national contributions in local elections, applies to “the several states,” was enacted prior to the March 24, 1976 effective date of the Covenant, and was not specifically excluded in the Covenant.¹⁶ The Covenant also applies to “subsequent amendments to such laws.”¹⁷ Furthermore, the Commission has previously applied the Act’s foreign national prohibition to corporate contributions of a respondent in Guam.¹⁸

As the court in *Bluman v. FEC* explained:

[P]olitical contributions . . . are an integral aspect of the process by which Americans elect officials to federal, state, and local government offices. . . . [Section 30121] serves the compelling interest of limiting the participation of *non-Americans* in the activities of democratic self-government. A statute that excludes foreign nationals from political spending is therefore tailored to achieve that compelling interest.¹⁹

Here, not only has CNMI accepted the application of the Act through the Covenant, but

¹⁵ Covenant § 502(a)(2).

¹⁶ See also FEC Act Amendments of 1974, Pub. L. No. 93-443, § 101(d), 88 Stat. 1263, 1267.

¹⁷ Covenant § 502(a)(2).

¹⁸ See MUR 3437 (The Guam Tribune) (Commission found reason to believe that respondent violated prohibition on corporate contributions; closed after investigation).

¹⁹ 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012) (emphasis added); see also *Singh*, 924 F.3d 1030 (upholding constitutionality of section 30121(a)(1) as to state and local elections based on Congress’s broad powers over foreign affairs and immigration and citing *Bluman* as precluding appellant’s First Amendment challenge).

1 the Act's purposes are furthered by such application. Just like in the 50 states, the CNMI holds
2 elections for governor and lieutenant governor every four years and for representatives to its
3 lower house every two years; and the CNMI and the states administer their elections as they
4 desire, limited by Constitutional considerations.²⁰ But Congress's interest in protecting the
5 political process from foreign influence is as important to democratic self-governance in the
6 CNMI, as it is everywhere else in the United States. Like the District of Columbia, the CNMI
7 elects a non-voting Member of the U.S. House of Representatives. Thus, the Act, its
8 amendments, and corresponding Commission regulations are applicable to the financing of local
9 elections in the CNMI, including the prohibition regarding foreign national contributions.

10 **B. Contributions**

11 Alter City's initial response stated that it could not locate information about any
12 contribution to CNMI campaigns or entities.²¹ In a later response submitted by counsel, Alter
13 City Group, a subsidiary of Alter City acknowledges having been "approached" to be an event
14 sponsor at a celebratory dinner for CNMI candidate Ralph G. Torres where it was asked "to
15 purchase" a table for \$10,000.²² Alter City does not deny that it is a foreign national.²³

16 Campaign finance reports and other information indicate that on or about January 11,
17 2015, Alter City contributed \$20,000 to the campaign of CNMI Governor Ralph G. Torres. On

²⁰ See, e.g., *Bush v. Gore*, 531 U.S. 98 (2000) (holding, in part, that Florida's method of selecting electors violated the Constitution).

²¹ Alter City Resp. (July 27, 2018).

²² Alter City Supp. Resp. at 2.

²³ Although Alter City's supplemental response asserts that a related entity is a U.S. corporation, the supplemental response does not represent that the U.S. corporation made the contributions or donations, or that no foreign national participated in the decision-making process with regard to the making of the contributions or donations.

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1 or about August 4, 2017, Alter City contributed \$10,000 to the Torres campaign. On or about
2 December 29, 2017, Alter City contributed \$5,000 to Torres.

3 Therefore, the Commission finds reason to believe that Alter City Group Holdings
4 Limited made at least \$35,000 in prohibited foreign national contributions in connection with
5 elections in the CNMI, in violation of 52 U.S.C. § 30121(a)(1)(A).