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Bureau of Economic Analysis (BEA) Maintains Mandatory Reporting Requirements for Foreign Investment in the United States

The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) maintains mandatory reporting requirements for foreign investment into the United States via its Form BE-13 for most transactions in which a non-U.S. entity (1) acquires an ownership interest in a U.S. entity or real estate; or (2) establishes a new U.S. business enterprise in the United States. Reporting may also be required if a foreign entity expands its existing U.S. operations. In each case, even indirect foreign investment (for example, a foreign parent company uses one of its existing U.S. subsidiaries to buy another U.S. company) may trigger a BE-13 filing requirement.

In some instances, BEA will send formal notification of BEA reporting requirements. Companies are still required to comply with mandatory reporting requirements, however, even if they do not receive a formal notification from BEA.

Qualifying foreign investment transactions must be reported to BEA within 45 days. Unlike certain of BEA's other investment surveys, a BE-13 filing is mandatory whenever a qualifying transaction occurs, regardless of whether BEA specifically contacts the U.S. reporting entity. In every case, the BE-13 filing requirement belongs to the U.S. entity that receives or is the target of the inbound foreign investment, although in some cases the foreign investor may choose to take charge of the filing process.

Transactions Requiring Submission of Form BE-13

Several different foreign investment scenarios outlined below may trigger a mandatory BE-13 filing requirement. Importantly, BE-13 filing requirements are not restricted to transactions involving U.S. operating entities. Even transactions involving the establishment or acquisition of a U.S. holding company without any physical operations or employees will likely trigger a filing obligation.

- > *Foreign Entity/Individual Acquires Ownership Interest in U.S. Entity or Real Estate*
Foreign-person acquisition of an ownership interest in a U.S. entity or real estate triggers a BE-13 filing

requirement. This includes any transaction in which a foreign person acquires greater than 10 percent of the voting interest of an existing U.S. entity, whether directly or indirectly. Also included are instances in which a foreign-owned U.S. company acquires an ownership interest in another U.S. company or legal entity.

> *Foreign Entity/Individual Establishes New U.S. Entity*

A BE-13 filing obligation is triggered when a foreign person establishes a new U.S. legal entity, whether directly or indirectly. This includes instances in which a foreign-owned U.S. company establishes a new U.S. entity for any purpose, including the establishment of a holding company.

> *Foreign Entity/Individual Expands Existing U.S. Operations*

A BE-13 filing requirement is triggered when the existing U.S. subsidiary of a foreign person expands its operations, including the construction or acquisition of a new facility where business is conducted.

Failure to submit a required Form BE-13 may trigger civil and/or criminal penalties.

Additional BEA Surveys

Apart from the BE-13, BEA maintains a number of mandatory investment surveys capturing both foreign direct investment in the United States and U.S. investment abroad. Certain of BEA's investment survey are required only when BEA specifically notifies a U.S. entity of its filing obligations, while other surveys (including the BE-13) are required whenever a qualifying transactions occurs.

Complying with BEA Filing Requirements

Any scenario in which a U.S. company is acquired by a foreign entity or receives foreign investment, whether directly or indirectly, may trigger a BE-13 filing requirement. As a result, corporate and real estate counsel should include an analysis of possible BEA filing obligations as part of their closing checklist for all transactions. U.S. companies with current or proposed foreign direct investment, or that are involved in investing outside the United States, should also familiarize themselves with BEA reporting requirements generally and work with counsel to determine whether their current or future investment transactions activity may trigger BEA filing requirements.

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This *GT Alert* was prepared by **Cyril T. Brennan**. Questions about this information can be directed to:

- > [Cyril T. Brennan](#) | +1 202.533.2342 | brennanct@gtlaw.com
- > [Renee A. Latour[‡]](#) | +1 202.533.2358 | latourr@gtlaw.com
- > [Kara M. Bombach](#) | +1 202.533.2334 | bombachk@gtlaw.com
- > [Michael X. Marinelli[‡]](#) | +1 512.320.7236 | marinellimx@gtlaw.com
- > [Sandra D. Gonzalez](#) | +1 512.320.7234 | gonzalezsd@gtlaw.com

[‡]Admitted to practice only in Virginia. Practice in the District of Columbia limited to matters and proceedings before federal courts and agencies.

[‡]Not licensed to practice in the State of Texas

Albany +1 518.689.1400	Delaware +1 302.661.7000	New York +1 212.801.9200	Silicon Valley +1 650.328.8500
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Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
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