



Client Alert

December 19, 2014

New Mandatory Foreign Direct Investment Reporting Requirement

On November 24, 2014, the Office of Management and Budget confirmed amendments to regulations of the Department of Commerce's Bureau of Economic Analysis ("BEA"). The amended regulations reinstate the reporting requirements for the BE-13, Survey of New Foreign Direct Investment in the United States, which were discontinued in 2009. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by a foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.

The reinstated BE-13 survey, like the previous BE-13 survey, collects information on the acquisition or establishment of U.S. business enterprises by foreign investors. The reinstated BE-13 survey also collects information on expansions by existing U.S. affiliates of foreign companies, including the establishment of new facilities, information that was not previously collected. With respect to new requirement to report expansions, U.S. affiliates should take note of the fact that the instructions to the form BE-13D indicate that expansion includes the construction or lease of a new facility by an existing U.S. affiliate and the construction of a facility that is intended for lease or sale by an existing U.S. affiliate, but excludes the transfer of existing operations from one location to another, the replacement of equipment or upgrade of an existing facility and the expansion of an existing facility but only if the expansion does not involve a separate facility where business is conducted.

Under the revised regulations, U.S. affiliates report information on expansions, acquisitions, and establishments of U.S. business enterprises by foreign investors. Depending on the type of investment transaction, U.S. affiliates will report information on one of six forms— BE-13A, BE-13B, BE-13C, BE-13D, BE-13E, or BE-13 Claim for Exemption. The filing requirement is mandatory whether or not the foreign person has been contacted by the BEA and even if the transaction does not meet the applicable threshold (generally \$3,000,000). Exemptions are not automatic and a BE-13 Claim for Exemption must be filed and accepted in order for the exemption to be effective.

The filing requirements are triggered by the completion the transaction ("reportable event") and reports are due within 45 calendar days after the transaction is "complete"; i.e., 45 calendar days after the closing of an acquisition, establishment of a new entity or, in the case of an expansion, the expansion is begun. The BEA will collect data retroactively back to January 1, 2014. For reportable events that occurred after January 1, 2014 and prior to the November 26, 2014, a person has 45 calendar days from that November 26th to submit the applicable form or exemption report to the BEA—i.e., reports are due by January 12, 2015. Reports may be submitted by mail, fax, or electronically through BEA's electronic filing portal at www.bea.gov/efile.

Failure to complete the reports in a timely manner and on the appropriate form is subject to criminal (up to \$10,000 per violation and/or imprisonment of not more than one year) and civil penalties (between \$2,500 and \$32,500 for each violation), plus injunctive relief ordering the party to comply.



The following resources are available on the BEA website, www.bea.gov/fdi:

- Current Reporting Requirements For BEA Surveys Of Foreign Direct Investment In The United States;
- Types of Transactions
- Mandatory Survey Of New Foreign Direct Investment In The United States (BE-13 Filing Instructions); and
- Forms for Reporting.

For further information please contact your relationship attorney at Masuda Funai or Mary W. Shellenberg (312-245-7522 or mshellenberg@masudafunai.com) or Jennifer Watson (312-245-7524 or jwatson@masudafunai.com).

About the Business Group

The Business Group at Masuda Funai is at the core of our extensive commercial practice. Our Business lawyers provide comprehensive legal advice and counseling to clients on a wide range of business issues from complex corporate and financing transactions to general day-to-day operational issues. We strive to provide, in a timely and personal manner, services that are tailored to each client's needs. We place special emphasis on clearly explaining U.S. laws and practices to our foreign clients doing business in the United States.

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