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The Bureau of Economic Analysis Reporting Requirements for Foreign Direct Investment: Still Time for Timely Filing

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In September of 2014, new foreign investment reporting requirements from the Department of Commerce's Bureau of Economic Analysis (BEA) became effective. The new regulations require the BEA to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish a new production facility.

The reporting requirement is retroactive, and reports for all qualifying transactions that occurred in 2014 were due on January 12, 2015. However, because many entities are only now learning about the new requirements the BEA will consider granting extensions to those who request them by February 27, 2015.

U.S. entities that have received direct foreign investment need to make sure to comply with the new reporting requirements, because a failure to make required reports could result in civil or criminal penalties.

Bracewell & Giuliani attorneys can help you identify any reporting obligations, work with BEA to request any needed extensions, and prepare the required reports.

Background on BEA Reporting

The BEA is collecting this data in form BE-13, Survey of New Foreign Direct Investment in the United States. Foreign direct investment is defined as the ownership or control by one foreign entity 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.

A BE-13 report is required of any U.S. company in which (1) a foreign direct investment in the United States relationship is created; (2) an existing U.S. affiliate of a foreign parent establishes a new U.S. legal entity, expands its U.S. operations, or acquires a U.S. business enterprise, or; (3) a U.S. business enterprise that previously filed a BE-13B or BE-13D indicating that the established or expanded entity is still under construction. In all cases, the reporting requirement only attaches when the total cost of the transaction, expansion or new entity is greater than \$3 million.

The BE-13 report is due no later than 45 days after the transaction is completed. For transactions that occurred from January 1, 2014 through November 26, 2014, the new regulations are retroactive, and all reports from these transactions were due by January 12, 2015.