# Mandatory Reporting of Foreign Investment in the United States

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Provided by Ortega-Medina & Associates

**The relative strength of the British Pound against the US Dollar recently has led a large number of Brits to liquidate their assets in Britain and relocate to the balmy climes of such US states as Florida and California. Some have chosen to make the move as investors via the E2 Treaty Investor visa program. Others have made the move by establishing US subsidiaries of their UK companies and transferring themselves to the US as L-1A multinational executives.**

I. Introduction

Most of these individuals will make the required investments or acquisitions completely ignorant of the US law that required them to report the transaction to the U.S. Department of Commerce within 45 days. The civil penalty for failing to report such investment or acquisition can include a fine ranging from $2,500 to 25,000.00. The following article will give the reader a brief overview of the initial reporting requirements.

II. The International Investment and Trade in Services Survey Act ("IITSSA")

The International Investment and Trade in Services Survey Act (IITSSA) is one of the primary US federal statutes that governs the reporting of investments made in the United States by foreign investors. Under IITSSA, and its related regulations, a mandatory report is required of a US business enterprise when a foreign person acquires (directly or indirectly) through an existing US affiliate, a 10%+ voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing US business enterprise that is then organized as a separate legal entity, or the existing US affiliate of a foreign person when it acquires a US business enterprise or operating unit that the existing US affiliate merges into its own operations.

The mandatory report must be filed with the US Department of Commerce's Bureau of Economic Analysis (the "BEA") no later than 45 days after the completion of such a transaction. Failure to file the mandatory report exposes one to a civil penalty of not less than $2,500.00, and not more than $25,000.00. Whoever willfully fails to report will be fined no more than $10,000.00. may be imprisoned, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such a violation, upon conviction, may be punished by a similar fine, imprisonment, or both. The IITSSA provides that the reported information is confidential, and may be used only for analytical or statistical purposes.

There is, however, an exemption for which an exemption claim must be filed if an established or acquired US business enterprise, as consolidated, has total assets of $3 million or less and does not own 200 acres or more of U.S. land, or the total cost of an acquisition by an existing US affiliate of a US business enterprise or business segment or operating unit that it merges into its own operations is $3 million or less and does not involve purchase of 200 acres or more of U.S. land. Additionally, no report need be filed if the transaction involves residential real estate held exclusively for personal use and not for profit making purposes.

A report may also be required of a US person who assists or intervenes in the sale to, or purchase by, a foreign person, of a 10 percent or more voting interest in a US business enterprise, including real estate, or who enters into a joint venture with a foreign person to create a US business enterprise. A US person must so report only if the US person knows of or has reason to believe that there is such foreign involvement.

III. The Exon-Florio Provision

The Exon-Florio provision provides for the review, investigation and possible suspension or blocking of certain mergers, acquisitions and takeovers that could threaten to impair US national security. The Committee on Foreign Investment in the United States ("CFIUS") has been delegated the authority to review and conduct investigations of mergers, acquisitions and takeovers where the transaction could result in foreign control of persons engaged in interstate commerce in the United States. Control refers to the ability to determine, direct or decide matters for the purchased company.

CFIUS has 30 days from notification of the transaction to review it and decide whether to proceed with an investigation. If the Committee determines that it should undertake an investigation, it must be completed within 45 days of this determination. Within 15 days after completion, the President must announce whether there is: (a) credible evidence that the purchaser might take action to impair the national security of the United States, and (b) that other provisions of law will not afford the President with adequate and appropriate authority to protect national security. If both of these criteria are met, the President may take action as the President considers appropriate to suspend or prohibit the transaction.

IV. State Reporting Requirements

In additional to the Federal reporting requirements, many US states have reporting statutes affecting foreign investment. California, for example, has statutes on insurance and banking. New York has both reporting and taxation requirements specific to foreign fire insurance corporations. Illinois has reporting requirements for foreign persons owning agricultural land. However, Illinois recently eliminated many of the former special reporting requirements for foreign insurers. Arkansas likewise has a reporting requirement for foreign interests in agricultural land. These examples are not a comprehensive summary of all reporting statutes for the states listed. Instead, they should serve as indicators where statutes are known to exist. Areas covered in state reporting statutes are principally in agriculture and insurance, but the individual investor should investigate to determine what the local jurisdiction requires.

V. Conclusion

Many foreign investors and business persons establishing operations in the United States, erroneously believe that their dealings with the US Federal and state governments will be limited to the acquisition of an L1 or E2 visa, and the filing of an annual US Federal Income Tax return. There are, however, several other important legal and financial formalities to observe if one is remain in compliance with the law and avoid exposure to civil penalties and criminal charges. Thus, our best advice is that it is always in the best interest of individuals contemplating an investment in the United States to engage the services of a US business lawyer and Certified Public Accountant with significant experience dealing with transnational matters, as early in the planning stages as possible, to help ensure compliance.



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Orlando Ortega-Medina is lead counsel for the U.S. business immigration law firm of Ortega-Medina & Associates , headquartered in San Francisco, California.õ The firm also maintains an EU gateway office in London, UK.õ Mr. Ortega-Medina has particular insight into complex L1 visa and E2 visa cases, as well as the post visa-issuance implications of foreign investment in the United States.



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