

FOREIGN INVESTORS FACE FEW RESTRICTIONS IN THE U.S.—PART I

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The U.S. welcomes foreign investment and generally treats it the same as domestic investment, imposing only relatively minor restrictions and reporting requirements applicable only to foreign investors. This article summarizes three of the main restrictions applicable to foreign investors in general. A future article will summarize three additional requirements.

The **International Investment and Trade in Services Act** (“IISA”) requires a comprehensive data collection program to monitor direct and portfolio foreign investment and international trade in services. Foreign investors must file initial, and, depending on the size of the entity involved, quarterly, yearly, and five-year reports. The IISA is not intended to regulate or dissuade foreign investment, but is merely a tool used to obtain the data necessary to analyze the impact of such investments. All reports submitted pursuant to IISA are confidential and may be used only for analytical or statistical purposes. The U.S. Department of Commerce’s Bureau of Economic Analysis is the authority charged with receiving and analyzing direct investment reports.

All investments in a U.S. “business enterprise,” including real estate, that result in a “foreign person” owning a 10 percent or more voting interest (or the equivalent) in the enterprise are subject to reporting. The obligation to report depends on whether the ultimate beneficial owner of the interest acquired is a foreign person. Therefore, a report must be submitted even where an acquisition is made by a U.S. intermediary for the benefit of a foreign person.

The **Agricultural Foreign Investment Disclosure Act** (“AFIDA”) requires a “foreign person,” including a foreign company, who acquires, holds, or disposes of an interest in U.S. “agricultural land” to disclose such a transaction or holding to the U.S. Secretary of Agriculture within 90 days after the occurrence of a “reportable event.” The Act contains no restrictions on foreign investment in U.S. agricultural land and is aimed only at gathering

reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of this foreign investment. Unlike reports filed under the IISA, reports filed under AFIDA are not confidential and are available for public inspection.

AFIDA generally defines agricultural land as land that has been used for agricultural purposes (farming, ranching, or timber production) within the past five years. However, if a tract of land is less than 10 acres in size and the annual gross receipts from the sale of products produced thereon is less than \$1,000, then events related to that land that would have otherwise been reportable are exempt from the AFIDA reporting requirements. Reportable events include: (1) the acquisition or transfer by a foreign person of any interest, other than a security interest, in agricultural land, (2) the change to foreign status of a U.S. person who owns a reportable interest in agricultural land, and (3) the change in characterization of land held by a foreign person from non-agricultural to agricultural.

Under the current **Currency and Foreign Transactions Reporting Act** (“CFTRA”), also known as the Bank Secrecy Act, both persons who physically transport and who “cause” the transportation of monetary instruments of more than \$10,000 at one time either into or out of the U.S. are required to file Treasury Form 4790 with the Customs officer in charge at the port of entry or departure. Monetary instruments include, in addition to currency, travelers checks and negotiable instruments in bearer form or endorsed so that title thereto passes upon delivery. The reporting obligation also applies when monetary instruments in excess of \$10,000 are mailed or shipped on any one occasion into or out of the U.S. On those occasions, Form 4790 must be filed by mail on or before the date the instruments are mailed or shipped.

Transfers of funds through normal banking procedures that do not involve physical transportation of monetary instruments are not required to be reported. Therefore, transfers by bank draft or wire transfer are exempted from the reporting requirement.

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