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## Regulatory Update

# CFIUS Requests Comments on Proposed Known Investor Program: Is It Worth the Effort for Foreign Investors?

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On Feb. 6, the U.S. Department of the Treasury (Treasury), which chairs the Committee on Foreign Investment in the United States (CFIUS), issued a [Request for Information](#) (RFI) seeking public comment on the proposed CFIUS Known Investor Program (KIP). First announced in May 2025, the KIP is an effort by CFIUS to streamline reviews for eligible foreign investors who provide diligence information to CFIUS in advance of and in connection with a formal CFIUS filing. Whether participating in the KIP would be beneficial for any given investor remains uncertain, pending Treasury's final determination of the specific benefits that participation in the KIP would confer and clarity on how these benefits would weigh against the significant information requirements for KIP participation.

Given the stringency of the KIP's eligibility criteria as currently proposed, the final KIP will likely be most useful to foreign investors from jurisdictions that are U.S. allies or partners and who have near-term plans for a CFIUS filing, a filing and compliance history with CFIUS, and straightforward organizational structures. Investors with opaque or unclear ownership or connections with "Adversary Countries" or restricted parties (even if attenuated) may be ineligible for KIP participation.

The criteria for the final KIP may change based on public comments in response to the RFI, the period for which ends on March 18.

### Known Investor Program: Eligibility Criteria and Questionnaire

The proposed application process for KIP participation involves two sets of questions: one initial set to determine the applicant's baseline KIP eligibility (Eligibility Criteria) and a second substantive set to assess potential national security sensitivities associated with the applicant (Questionnaire). The applicant foreign investor would be required to identify each subsidiary or affiliate for which it is seeking Known Investor Entity (KIE) status, and each must individually meet the Eligibility Criteria and answer the substantive questions that comprise the Questionnaire. A KIE includes the applicant and any entities under common ownership or control with the applicant that the applicant wishes to include (this would likely comprise the foreign investing entity and its control chain, up to and including its ultimate parent).

### *Eligibility Criteria*

To participate in the KIP, each applicant and its KIE (or in some cases, their respective parents (i.e., any entity holding at least a 50% voting interest)) must first meet the Eligibility Criteria, which notably include CFIUS filing history and compliance requirements and also screen for certain touchpoints involving restricted parties and/or Adversary Countries (currently defined as China, including Hong Kong and Macau; Cuba; Iran; North Korea; Russia; and the Nicolás Maduro regime in Venezuela). Key requirements in the proposed Eligibility Criteria include the following:

- **CFIUS filing history.** The foreign investor applicant (inclusive of subsidiaries) must have submitted at least three CFIUS filings in the past three years. CFIUS must have been able to conclude all action (or in the case of a declaration, CFIUS was unable to conclude action) with respect to at least one of the three transactions and the foreign investor applicant (inclusive of subsidiaries) must intend to make another CFIUS filing in the next 12 months.
- **Compliance history.** In the past five years, each KIE and its parent must not have violated a material provision of a mitigation agreement or an order imposed by CFIUS, or made a material misstatement, omission or false certification in the context of a prior filing.
- **Restricted party and location requirements.** No KIE or its parent may be identified on certain restricted party lists maintained by the U.S. government (i.e., the Entity List, Military End User List, SDN List, NS-CMIC List, SSI List or 1260H List, together the Restricted Lists) or have its headquarters or principal place of business located in an Adversary Country.
- **Ownership requirements.** No entity or individual on a Restricted List or any Adversary Country government may hold a direct or indirect interest of 10% or more in any KIE, and no third-party entity with its headquarters or principal place of business in, or any individual that is a national of, an Adversary Country may hold a 25% or greater interest in any KIE.
- **Board requirements.** No entity or individual on a Restricted List or any Adversary Country government may hold a right to appoint a member of any KIE's board of directors or equivalent, and no board members or senior officers of any KIE may be principally located in, or be a national of, an Adversary Country.
- **Operational requirements.** No KIE may have more than 50% of its employees, or all of its manufacturing or R&D facilities, located in Adversary Countries.
- **Sourcing requirements.** To the best of its knowledge, no KIE may use components, equipment or infrastructure sourced from persons on certain Restricted Lists, or incorporate products or services from such persons into items that the applicant supplies to third parties.

### *Questionnaire*

Applicants who meet the Eligibility Criteria may choose to complete the Questionnaire to participate in the KIP, which, as currently proposed, requests the following substantive information about the applicant/KIEs (and in some cases, their respective parents), among other information:

- **Legal and organizational factors.** This includes each KIE's complete ownership structure, including beneficial ownership information for greater than 5% economic and voting interest holders and expected near-term ownership changes; governance documents and key thresholds of each KIE and their respective parents; any foreign government interests/governance rights; information on KIE-affiliated funds that invest in the United States and on individuals or entities serving on such funds' limited partner advisory committee (LPAC) or equivalent; and information on shareholders that are active participants in or that attend shareholder meetings of each KIE and their respective parents.

- **Personnel and operation processes.** These include key personnel information for each KIE; personal identifier information, biographical and role information of directors, officers and greater than 5% owners of each KIE and its ultimate parent; description of how each KIE selects individuals to represent it at investment targets; description of controls governing each KIE's board member access to information regarding the application's operational or investment decisions and the nature and frequency of each KIE's contact with investment targets; information on senior officers' and committees' decision-making roles for investments for each KIE; and information about each KIE's limited partners and frequent co-investment partners (including information on co-investor diligence processes).
- **Business operations.** These include business descriptions and annual reports of each KIE and its ultimate parent; financial information of each KIE; description of each KIE's global and U.S. investment strategy; a list of standard consent or veto rights held with respect to each KIE's portfolio companies and the frequency of their exercise; information on each KIE's subsidiaries or portfolio companies and their operations and management by the applicant; and security and compliance program materials of each KIE.
- **U.S. government touchpoints and compliance posture.** These include information on each KIE's U.S. government contracts, collaboration and supply relationships; each KIE's CFIUS filing history and any relevant mitigation agreements; each KIE's general compliance history with other U.S. government authorities (including, but not limited to, recent compliance with U.S. sanctions administered and enforced by the Office of Foreign Assets Control); description of processes and outcomes for multijurisdictional filings made by each KIE in the past five years and approval of any remedial actions undertaken by each KIE for noncompliance in a non-U.S. jurisdiction since 2020; and each KIE's history of patent infringement or IP theft.
- **Verifiable distance from Adversary Countries.** This includes information on each KIE's investment partners for certain investments (i.e., greater than or equal to 10%) located in an Adversary Country; each KIE's places of operations and information on each KIE's portfolio and strategy related to investment in Adversary Countries; description of other KIE relationships with entities organized in an Adversary Country; description of each KIE's ties to any government of an Adversary Country (including receipt of funding or products/services); and each KIE's sourcing connections to Adversary Countries.

### KIP Advantages and Disadvantages

The KIP is contemplated to be a voluntary procedure — an investor would have to consider whether the benefits of participating in the KIP outweigh the time and resources associated with the application process and meeting the various requirements. The RFI does not clarify the exact benefits that participants in the KIP would receive. While the RFI states that the KIP is intended to introduce efficiencies for eligible investors in the CFIUS review process, it also indicates that “participation in the [KIP] alone would not guarantee a particular outcome in CFIUS's review of a transaction.” If the final KIP provides tangible, binding benefits for eligible investors (e.g., significant reductions in the statutory period, the number of questions from CFIUS during a CFIUS review and/or the breadth of information required in a filing), participation in the KIP could provide meaningful benefits.

In any case, a foreign investor would need to weigh these benefits against the strict Eligibility Criteria and Questionnaire, which require the collection and compilation of extensive information regarding corporate ownership, governance, compliance and operational information that will be costly and time-consuming to compile on the front-end. An applicant would also need to undertake potentially significant preparatory steps, including ensuring that its sourcing and procurement meets the sourcing requirements, as well as reviewing and potentially divesting investments in jurisdictions such as China that are Adversary Countries. Further, potential applicants would need to consider making voluntary filings to satisfy the Eligibility Criteria's filing-history requirement, which could drive a foreign investor to submit a filing in cases where it otherwise might not have. It is also unclear how the KIP would affect CFIUS's review of filings made by foreign investors who elect not to, or are ineligible to, participate in the KIP.

## Conclusion

The KIP reflects Treasury's implementation of the America First Investment Policy, which includes directives to increase efficiencies in the CFIUS process. Whether participating investors may benefit from efficiencies in future CFIUS reviews has yet to be determined, pending Treasury's promulgation of the concrete benefits of the KIP. Investors considering participation in the KIP should assess the eligibility criteria, scope, and costs and benefits of early engagement with CFIUS through the KIP application process. Given that the final eligibility criteria appear likely to be stringent, the final KIP might be most useful to a relatively narrow subset of foreign investors, such as those known to CFIUS and having relatively straightforward and transparent ownership and control structures, based in jurisdictions that are highly trusted U.S. partners in national security and defense matters (e.g., NATO and Five Eyes members), and that are serial CFIUS filers.

The Paul Hastings Global Trade Controls team regularly advises on CFIUS and related matters and are closely monitoring developments related to the KIP. If you have any questions regarding how the KIP may affect your company, please do not hesitate to contact any member of our team.

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:*

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