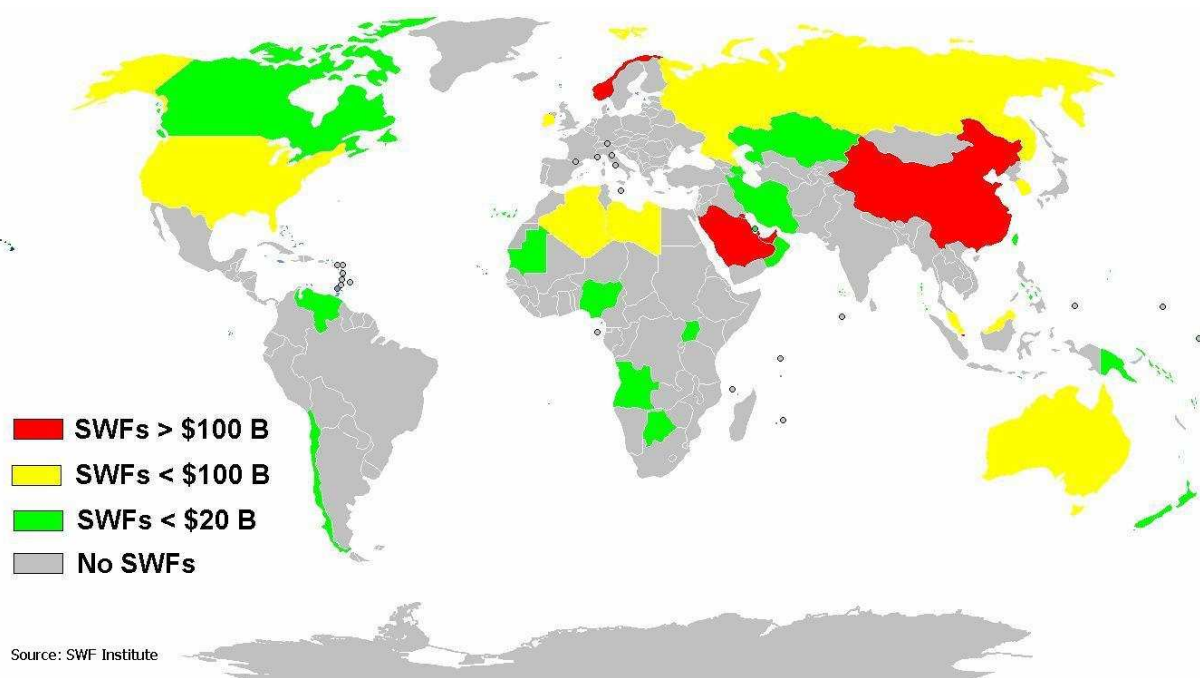


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**MSc IN BANKING & FINANCIAL MANAGEMENT**

**THESIS' TITLE:**

**REGULATING SOVEREIGN WEALTH FUNDS**  
*IN SEARCH OF THE GOLDEN MEAN*



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## **Introduction**

Sovereign Wealth Funds<sup>1</sup> are generally defined as state-owned investment vehicles, which manage a diversified portfolio of domestic and international financial assets. They have emerged as a way for governments, rather than individuals and privately owned firms, to invest the foreign exchange reserves that have been generated by expanded trade<sup>2</sup>.

Investments by SWFs are one type of capital flow between countries, so they have always been closely related to global imbalances in trade. When countries run surpluses on their current account, they generate equal and opposite net capital outflows of one sort or another and those capital flows produce an investment income<sup>3</sup>.

SWFs have been funded in various ways: from central bank reserves<sup>4</sup>, the export of state-owned resources<sup>5</sup>, taxation of exports<sup>6</sup>, fiscal surpluses<sup>7</sup> or from privatization receipts<sup>8</sup>. Whatever their origins, objectives or funding, the SWF model is not new, even if their number has increased sharply over recent years<sup>9</sup>. It is estimated that 35% of all SWFs were established over the past five years.

However, some SWFs are far older, investing since the 1960s and 1970s and by now extremely diversified<sup>10</sup>. The Kuwait Investment Authority, for example, the oldest, was created in 1953, Singapore's Temasek Holdings in 1970, the Abu Dhabi

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<sup>1</sup> SWFs.

<sup>2</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, *Sovereign Wealth Funds—A Work Agenda*, pp. 26-27.

<sup>3</sup> John Gieve, 14 March 2008, "Sovereign wealth funds and global imbalances", pp. 1-2.

<sup>4</sup> E.g. China and Singapore.

<sup>5</sup> Botswana, Chile, Abu Dhabi, or Kuwait.

<sup>6</sup> Russia, Alaska.

<sup>7</sup> E.g. Korea or New Zealand.

<sup>8</sup> Malaysia or Australia.

<sup>9</sup> SWF are not new neither the sole large publicly-held pools of assets that are playing an increasingly prominent role in the global investment arena. For a comparison of distinct forms of such public funds, namely foreign exchange reserve funds, SWFs, and public pension funds, see Olivia S. Mitchell, John Piggott, and Cagri Kumru, "Managing Public Investment Funds: Best Practices and New Challenges", NBER Working Paper, June 2008, No. 14078. The red light between SWFs and pension funds is not always obvious as underlined by Truman's scoreboard exercises that list a total of 56 SWFs in 38 countries (Truman, 2008). In the same way, if SWFs are linked to state or official assets, a lot of other governments around the world hold significant stakes in listed companies: France, for example, tops the rankings and holds listed equities valued at USD 280 billion, ahead of Russia that is second with nearly USD 250 billion (Balding, 2008).

<sup>10</sup> See González Cid, 2008.

Investment Authority<sup>11</sup> in 1978. Singapore, with a powerful export base but a relatively small economy, was one of the very first in Asia to create a fund, establishing Temasek in 1974 and then the Government Investment Corporation of Singapore<sup>12</sup> in 1981, with the aim of increasing the return on investment of its external surpluses by targeting international portfolio investments since the very inception. It was the commodity boom of the 2000s and the rise of emerging markets economies which boosted the new wave of SWF creation, with China, Russia and Dubai creating their own sovereign wealth management institutions<sup>13</sup>.

Policymakers, have to face certain issues related to SWFs. The first set of issues that they have to face is to determine whether or not they should set up an SWF to meet their broad policy objectives. In practice, a key question is to determine whether the country has an “adequate” or “optimal” level of international reserves. Even if the country has indeed an “ample” enough level, policymakers will have to decide whether they will use the SWFs assets to meet balance of payments needs, should they materialize. A related question is that of better alternatives to setting up an SWF.

Second, once they have gone ahead and set up an SWF, policymakers will have to decide on a number of operational questions which should be consistent with their broad policy objectives. Operational objectives are needed to derive appropriate investment policy and include funding, withdrawal, and spending rules.

Third, often overlooked, an adequate governance framework will have to give clear indications as to which institution determines the SWF’s policy objectives and overall risk tolerance, its operational objectives, and its investment guidelines.

Finally, given the above, policymakers have to decide where to invest the SWFs assets, that is its strategic asset allocation, starting with the elaboration of an investment policy. The investment policy should be again consistent with broad policy objectives. The operational objectives will drive the investment horizon, the risk tolerance, and the investment environment, including asset classes and their

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<sup>11</sup> ADIA.

<sup>12</sup> GIC.

<sup>13</sup> Javier Santiso, October 2008, “Sovereign Development Funds: Key financial actors of the shifting wealth of nations”, pp. 7-8.

correlation, asset liability management and other constraints, which in turn, will determine the strategic asset allocation.

Key issues, especially one, prone to political pressure, is the decision to invest a share of the SWFs assets domestically. In this case, this decision should be considered in the light of the broad policy objectives and the country's macroeconomic policy framework. For instance, avoidance of the Dutch Disease<sup>14</sup> may lead to the decision of not investing domestically. Again, institutional arrangements are important in the context of the SWF's investment policy. For instance, policymakers, although they will bear the responsibility for the performance on the SWFs' assets, will have to take a position regarding the use of external managers<sup>15</sup>.

As regards the chapters to follow, Chapter 1 examines further details about SWFs, concerning their origin, their similarities and differences with other funds, the reasons and motives of their existence, their investment horizon and risk tolerance and finally their impact on the economy as a whole. As the analysis goes on, Chapter 2 presents SWFs' size by region and asset allocation, as long as, the benefits and concerns stemming from these investment vehicles. In the main part of this thesis, is analyzed the need for regulation and how Europe, OECD, IMF and Greece react at this challenge.

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<sup>14</sup> This condition arises when foreign currency inflows cause an increase in the affected country's currency. This has two main effects for the country with Dutch disease:

- a. A decrease in the price competitiveness, and thus the exports, of its manufactured goods
- b. An increase in imports.

The end result is that non-resource industries are hurt by the increase in wealth generated by the resource-based industries.

<sup>15</sup> Udaibir S. Das, Yinqiu Lu, Christian Mulder, and Amadou Sy, 2009, "Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations", pp. 4-5.

## **CHAPTER 1:What are SWFs?**

### **1.1 Definition**

SWFs is an heterogeneous group of investors that apply a wide range of investment strategies reflecting their different objectives. When executing their strategic asset allocation<sup>16</sup>, some SWFs invest solely in publicly-listed financial assets<sup>17</sup>, while others invest across all major asset classes, including alternative investments. Some SWFs invest relative to market indices and sometimes put additional caps on the maximum holding of each company's shares with a view to ensuring diversification. Other SWFs that aim at maximizing absolute returns over longer time horizons, may shift between different asset classes and acquire larger stakes in specific companies that they see as profitable investments. It is unclear how active is the role they have in these companies.

However, the evidence suggests that SWF are generally passive and long-term investors with no desire to impact company decisions by actively using their voting rights<sup>18</sup>. Some apply social responsibility or ethical guidelines to rule out specific industries<sup>19</sup> that may not conform to the social and ethical objectives of their governments.

Most SWFs actively use external managers, either to match index returns or to create active risk-adjusted return<sup>20</sup>. Although, public sector investment managers—such as reserve managers—have significant experience in fixed-income markets, they often have limited capacity for investment in other asset classes, such as equities. Thus, the SWFs rely on external fund managers to implement their strategic asset allocation in areas where their capacity is limited.

Some SWFs have, however, established in-house capacity and operate as highly professional investment managers<sup>21</sup> and rely less on external managers than in

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<sup>16</sup> SAA.

<sup>17</sup> E.g., bonds and equities.

<sup>18</sup> This means that they vote by proxy and often ask external managers to vote on their behalf.

<sup>19</sup> E.g., tobacco, military.

<sup>20</sup> Some SWFs taking larger stakes in companies have explicitly relinquished their voting rights as a condition for entering into private transactions; this was for instance the case when China Investment Corporation acquired a stake in Blackstone Group of close to 10 percent in May 2007.

<sup>21</sup> E.g., Norway, Abu Dhabi, and Singapore.



their past. It is highlighted that by using external managers and passive index-based investment strategies, SWFs may be able to obtain the desired asset class returns, while avoiding potential scrutiny of their investments.

Substantially, SWFs, are considered to be government-owned investment funds, set up for a variety of macroeconomic purposes and which are typically funded by foreign exchange assets that invest long term overseas. They are quite distinct from government-owned pension funds which have well-defined liabilities and from state-owned enterprises whose primary function is production or the provision of services.<sup>22</sup>

More specifically, *three key elements* define an SWF:

1. **Ownership:** SWFs are owned by the general government.
2. **Investments:** The investment strategies include investments in foreign financial assets, so it excludes those funds that solely invest in domestic assets.
3. **Purposes and Objectives:** Established by the general government for macroeconomic purposes, SWFs are created to invest government funds to achieve financial objectives, and (may) have liabilities that are only broadly defined, thus allowing SWFs to employ a wide range of investment strategies with a medium- to long-term timescale. SWFs are created to serve a different objective than, for example, reserve portfolios held only for traditional balance of payments purposes. While SWFs may include reserve assets, the intention is not to regard all reserve assets as SWFs<sup>23, 24</sup>.

As a result, the definition of sovereign wealth fund excludes, among other things, foreign currency reserve assets held by monetary authorities for the traditional balance of payments or monetary policy purposes, state-owned enterprises<sup>25</sup> in the

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<sup>22</sup> This definition has been extracted by the INTERNATIONAL MONETARY FUND, in collaboration with the Monetary and Capital Markets and Policy Development and Review Departments, and approved by Mark Allen and Jaime Caruana (February 29, 2008), pp. 26.

<sup>23</sup> Likewise, the intention is not to exclude all assets on the books of central banks: SWFs can be on the books of central banks if they also are held for purposes other than balance of payments purposes (e.g., as intergenerational wealth transfer).

<sup>24</sup> International Working Group of Sovereign Wealth Funds, 2008, Generally Accepted Principles and Practices, "Santiago Principles", pp. 27.

<sup>25</sup> SOEs.

traditional sense, government-employee pension funds, or assets managed for the benefits of individuals.

### **1.1.1 Comparison with other funds**

Most SWFs share certain characteristics that originate from their specific nature. For example, the lack of a continuous stream of outflows favours the pursuit of long-term investment strategies, as implemented by most SWFs. In this respect, SWFs differ from sovereign pension funds that operate subject to explicit liabilities and a continuous stream of payments, making SWFs more similar to private mutual funds. Second, the absence of explicit liabilities also has a bearing on the willingness to take risk, as standard theory predicts a higher share of fixed income securities for funds that are subject to recurring payments. Third, most SWFs appear to have substantial exposure to foreign investments or are even entirely invested in foreign assets<sup>26</sup>.

SWFs help avert boom-bust cycles in their home countries and facilitate the saving and transfer across generations of proceeds from fiscal surpluses. Compared with central bank managed reserve assets, SWFs allow for greater portfolio diversification and focus more on generating higher returns.

Despite the scarce information available, two main traits of the portfolio composition of SWFs can be identified: First, the largest part of SWFs' holdings is accounted for by foreign investment, although some SWFs either restrict their portfolio to domestic assets. Second, the share of risky assets in SWFs' portfolios appears to be substantial. In fact, SWFs have, over recent years, acquired significant shares in many large stock corporations in advanced economies, in particular, in the financial sector<sup>27</sup>.

The distinguishing feature of SWFs from other investment vehicles is that they are state funded. In general, SWFs are funded from accumulated foreign-exchange reserves in their sponsor countries, but are managed separately from the official reserves. Typically, SWFs have a diversified investment strategy, with a higher level

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<sup>26</sup> ECB Monthly Bulletin, January 2009, pp. 81-82.

<sup>27</sup> ECB Monthly Bulletin, January 2009, pp. 84.

of risk accepted in search of higher returns. SWF portfolios include a wider range of financial assets, including fixed-income securities but also equities, real estate and alternative investments<sup>28</sup>.

One series of enforcement issues associated with SWFs are similar to the issues associated with hedge funds. More specifically, some SWFs, or persons associated with them, like some hedge funds, may undermine market integrity by engaging in insider trading or other market abuses. SWFs, like hedge funds, are relatively opaque and have, by virtue of their substantial assets, substantial power in financial markets.

However, SWFs, unlike hedge funds, have power derived from being governmental entities, which may give them access to government officials and information that is not available to other investors. There is the potential for these powerful market participants to obtain material non-public information, either by virtue of their financial and governmental powers or by use of those powers, to engage in illegal insider trading using that information. The magnitude of any such conduct could be quite large given the assets these funds have at their disposal<sup>29</sup>.

More specifically, hedge funds have come a long way since the Sterling attack. They have been linked to other instances of market turmoil, like the Mexican Peso meltdown in 1994-95 and the Asian financial crisis of 1997-98. Studies have revealed little evidence that hedge funds were mainly responsible for those episodes. But their participation is not in dispute. The incident of near collapse of Long Term Capital Management in 1998 and its subsequent recapitalisation by a consortium of raised questions about the risks that large and highly leveraged hedge funds, doubted systemic stability<sup>30</sup>.

Although, the hedge fund industry has continued to grow. There are now about 6,000 hedge funds worldwide, managing more than US\$550 billion. In 2001, some US\$140 billion of new capital was invested into hedge funds. By comparison, the

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<sup>28</sup> Commission Of the European Communities, Brussels 2008, "A common European approach to Sovereign Wealth Funds", pp. 4.

<sup>29</sup> Available at <http://www.sec.gov/news/testimony/2008/ts020708lct.htm>.

<sup>30</sup> Yeo Lian Sim, 19 September 2002, "Hedge funds - a mainstream alternative", pp. 1.

entire industry was only US\$20 billion in 1990<sup>31</sup>. While high net worth individuals remain the main source of capital, hedge funds are becoming more popular among institutional and retail investors. Funds of hedge funds and other hedge fund-linked products are increasingly being marketed to the retail market<sup>32</sup>.

Hedge funds are typically structured as private partnerships. Investors range from wealthy individuals and charitable endowments to pension funds and sovereign states. Hedge fund managers are typically paid a fixed fee<sup>33</sup> and a cut of the profits, typically 20%, every year<sup>34</sup>. A hedge fund is a vehicle for holding and investing the funds of its investors<sup>35</sup>. Hedge funds typically offer their investors liquidity access following an initial “lock-up” period, which is typically for less than two years<sup>36</sup>. Hedge funds are generally privately-owned investment funds, and so are not regulated<sup>37</sup>. These funds were developed as an alternative to open-end investment funds or mutual funds<sup>38</sup>. The fund itself has no employees and no assets other than its investment portfolio and cash, while its investors are its clients<sup>39</sup>.

Hedge funds are typically open only to a limited range of professional or wealthy investors. This provides them with an exemption in many jurisdictions from regulations governing short selling, derivative contracts, leverage, fee structures and the liquidity of interests in the fund. A hedge fund will typically commit itself to a particular investment strategy, investment types and leverage levels via statements in its offering documentation, thereby giving investors some indication of the nature of

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<sup>31</sup> Yeo Lian Sim, 19 September 2002, “Hedge funds - a mainstream alternative”, pp. 1, reference to Brooks, C. and H.M. Kat, 2001, “The Statistical Properties of Hedge Fund Index Returns and Their Implications for Investors”. 8th Annual Hennessee Hedge Fund Manager Survey, 2002.

<sup>32</sup> Yeo Lian Sim, 19 September 2002, “Hedge funds - a mainstream alternative”, pp. 1, reference to Financial Stability Forum, 11 Mar 2002, “The FSF Recommendations and Concerns Raised by Highly Leveraged Institutions: An Assessment”.

<sup>33</sup> This fee ranges from 1%-2% of assets under management.

<sup>34</sup> J. Ballabon (President of the Ballabon Group LLC, a government relations and crisis management firm in New York and Washington, DC.), June 2008, available at <http://library.findlaw.com/2008/Jun/1/247212.html>.

<sup>35</sup> “Hedge Fund”, 18 January 2009 available at <http://en.wikipedia.org/wiki/hedge>.

<sup>36</sup> Securities And Exchange Commission, Release No. IA-2333; File No. S7-30-04, Registration Under the Advisers Act of Certain Hedge Fund Advisers (2004) pp.38, available at [www.sec.gov](http://www.sec.gov).

<sup>37</sup> “What are Hedge funds?” [http://useconomy.about.com/od/themarkets/f/hedge\\_funds.htm](http://useconomy.about.com/od/themarkets/f/hedge_funds.htm).

<sup>38</sup> P.Gaughan, 2007, “How Private Equity and Hedge Funds Are Driving M&A”, Wiley Periodicals, Inc, pp. 59.

<sup>39</sup> “Hedge Fund”, 18 January 2009, available at <http://en.wikipedia.org/wiki/hedge>.

the fund<sup>40</sup>. A key difference between hedge funds and other financial actors is that the rate of hedge fund failure is considerably higher.

As concerns private equity, an important source of confusion and controversy appears to be the lack of a generally accepted definition. This is not just a purely academic question, but an important – and perhaps crucial – obstacle to regulation, since private equity activities can conceivably be carried out in many different legal forms. For example, private equity activities may be carried out by companies instead of partnerships. Attempts to regulate one form of private equity might then be contravened by the appearance of new functional forms. Alternatively, regulation may have to be very comprehensive and costly for it to be effective.

Private equity or buyout firms are defined as investment funds which:

- buy, own and sell controlling positions, typically close to 100%, in mature companies;
- finance a substantial part<sup>41</sup> of their investments by debt;
- employ fund managers paid by performance<sup>42</sup> ;
- have a finite life span and are dissolved after a finite number of years<sup>43, 44</sup>.

Private equity firms raise their capital from a variety of sources, including institutional investors such as pension funds. These investors have looked to private equity firms as a way of achieving higher returns on their portfolio of investments. Private equity market is a collection of funds that have raised capital by soliciting investments from various large investors for the purpose of taking equity positions in companies. When these investments acquire 100 percent of the outstanding equity of a public company, we have a going-private transaction. When the equity is acquired through the use of some of the investment capital of the private equity fund but mainly borrowed funds, we tend to call such a deal a leveraged buyout<sup>45</sup>. The fact that these deals are very common investments for private equity funds has led some to call these funds LBO funds.

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<sup>40</sup> M.Kinga, P.Maier , pp. 1-2.

<sup>41</sup> E.g. 2/3.

<sup>42</sup> E.g., 20% of financial returns in excess of 8% a year.

<sup>43</sup> E.g., 5.

<sup>44</sup> S.Thomsen, 2009, “Should Private Equity Be Regulated?”, European Business Organization Law Review 10, Cambridge University Press , pp. 98-99.

<sup>45</sup> LBO.

However, private equity funds may make other investments, such as providing venture capital to nascent businesses. Funds established for this purpose are sometimes called venture capital funds. Private equity funds seek out investments that are undervalued. These could be whole companies that are not trading at values commensurate to what the fund managers think would be possible. They could also be divisions of companies that want to sell the units due to a change in strategy or a need for cash. Funding for private equity firms often comes from larger pools of capital, such as pension funds and charitable endowments seeking alternative investments to help generate outsized returns to fund their long-dated liabilities.

Hedge funds are similar to private equity funds in many respects. Both are lightly regulated, private pools of capital that invest in securities and compensate their managers with a share of the fund's profits. Most hedge funds invest in relatively liquid assets, and permit investors to enter or leave the fund, perhaps requiring some months notice. Private equity funds invest primarily in very illiquid assets such as early-stage companies and so investors are “locked in” for the entire term of the fund. Hedge funds often invest in private equity companies’ acquisition funds<sup>46</sup>. Although private equity funds and hedge funds are often lumped together, it is very important to distinguish between the two categories. Hedge funds may be activist investors that try to influence corporate governance, but they typically do not acquire controlling ownership stakes. In contrast, private equity funds nearly always acquire control<sup>47, 48</sup>.

## **1.2 Reasons of existence**

The existence of SWFs is attributed to many reasons. To start with, in practice, governments approach the establishment of an SWF when critical reserves are available to be invested. More specifically, in the oil-exporting countries, these reserves have built up largely due to high oil prices and the inability of these countries to absorb all the revenues concurrently. Moreover, these reserves are likely to increase. According to the IMF’s most recent estimates, oil exporting countries will accumulate about \$300 billion to \$400 billion of surpluses every year.

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<sup>46</sup> “Hedge Fund”, 18 January 2009, available at <http://en.wikipedia.org/wiki/hedge>.

<sup>47</sup> See appendix pp. 88.

<sup>48</sup> S.Thomsen, pp. 99.

A second reason for capital build up in public hands<sup>49</sup> is exchange rate policy. For a variety of reasons, China and other East Asian countries have responded to current account surpluses and capital inflows with reserve accumulation by the central bank rather than allowing these surpluses both to be self-corrected and lodged in private hands through currency appreciation<sup>50</sup>.

In addition, large foreign exchange inflows are not easy to sterilise. They tend to contribute to asset price bubbles and higher inflation which itself can undermine economic and financial stability. The effect of such inflows into China and oil exporting countries has been compounded recently by their exchange rates being pegged or managed against the falling dollar. This has contributed to the build up of reserves and SWFs<sup>51</sup>.

### **1.2.1 Role and aims**<sup>52</sup>

SWFs may act as classical development finance institutions in their homelands, and as such contribute to the diversification of their economies, but when investing abroad, these funds tend to act as much more classical private asset managers. As noted by Balding<sup>53</sup>, who carefully analyzed their portfolios and asset allocations strategies, SWFs have acted as rational and economically driven investors, diversifying their portfolio by asset class and geographic region. They require returns, risk adjusted diversification and, above all, good investments. But through their investing in developing and emerging countries, they contribute to development: generating employment, providing capital for infrastructure and supplying long term money for diverse industries from telecoms to banking services.

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<sup>49</sup> A phenomenon most starkly associated with China.

<sup>50</sup> Aaditya Mattoo, Arvind Subramanian, The World Bank Development Research Group Trade Team, July 2008, Currency Undervaluation and Sovereign Wealth Funds: "A New Role for the World Trade Organization", pp. 11-12.

<sup>51</sup> John Gieve, 14 March 2008, Speech by Sir John Gieve, Deputy Governor of the Bank of England, to the Sovereign Wealth Management Conference: "Sovereign wealth funds and global imbalances", pp. 5.

<sup>52</sup> Javier Santiso, Director, OECD Development Centre Chair, OECD Emerging Markets Network, October 2008, "Sovereign Development Funds: Key financial actors of the shifting wealth of nations", pp.7, and, Danny Leipziger, July 2008, "Economic Viewpoint", Number 5.

<sup>53</sup> Balding, 2008.

### **1.2.2 Motives for establishing SWFs**

Next to shifting out of excessive reserves, economic diversification and efficiency gains are major economic motives for establishing SWFs. For raw-material rich countries, reducing resource dependence through vertical and horizontal sector diversification is a major development goal. SWFs can serve this goal in several ways: by helping limit unwarranted currency appreciation, it contains the competitiveness burden for non-traditional industries (“Dutch Disease”)<sup>54</sup>.

By investing in world-class business, technology transfer and network benefits can be fostered and production efficiency be raised as a future driver of growth; by investing in infrastructure, in particular with regional links, private-sector business can be stimulated. This motive is particularly relevant in Asian countries where future growth cannot be based on mere factor accumulation but requires greater reliance on more efficient use of accumulated production factors. The aspect of boosting efficiency in funds allocation may well explain the recent rush by SWFs to acquire stakes in US financial intermediaries battered by the sub-prime lending crisis<sup>55</sup>.

Another motive for setting up an SWF is to enable better management of the public-sector balance sheet and to ensure that the asset management strategy of the SWF is consistent with an economy’s underlying macro-fiscal objectives, while taking into account associated risks<sup>56</sup>.

### **1.3 Types of SWFs**

As for the source of the saving surplus, SWFs can be divided into two types:

- **Commodity-based funds** that can be used for several purposes, including fiscal revenue stabilization and preventing foreign exchange funds from

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<sup>54</sup> Definition of Dutch disease: A surge in resource exports leads to a real appreciation of the country’s exchange rate and this hurts other exporters and producers in import-competing sectors (Corden and Neary,1982). A resource boom affects the economy through the *resource movement effect* and through the *spending effect*. For Dutch Disease to arise and become a serious policy issue, there must be other sectors for which the rise in the real exchange rate would create problems relating to competitiveness.

<sup>55</sup> Deutsche Bank Research, July 18, 2008, “How to spend it: commodity and non-commodity sovereign wealth funds”, pp 3-5.

<sup>56</sup> Deutsche Bank Research, July 18, 2008, “How to spend it: commodity and non-commodity sovereign wealth funds”, pp 4-5.



fanning inflation<sup>57</sup>. They are established through the receipts from commodity exports owned or taxed by the government.

- **Non-commodity funds** that are more commonly used to make stand-alone investments, particularly when a country feels it has accumulated “excess” foreign reserves in a particular currency<sup>58</sup>. They are usually financed by a transfer from the official foreign exchange reserves, hence via the country’s central bank<sup>59</sup>.

They can also be broadly distinguished based on their main objective<sup>60</sup>:

- **Stabilization funds**, designed to insulate the budget and the economy against volatile commodity<sup>61</sup> price changes;
- **Savings funds for future generations**, which aim to convert non renewable non financial assets into a more diversified portfolio of assets yielding higher returns;
- **Reserve investment funds**, which are established to increase the return on international reserves;
- **Development funds**, for funding socioeconomic projects or promoting industrial policies that might raise a country’s potential output growth; and
- **Contingent pension reserve funds**, for covering contingent unspecified pension liabilities on the government’s balance sheet.

#### **1.4 Investment horizon and risk**

The investment horizon reflects the time that the fund is expected to be used and the period over which the return is to be maximized. Each of the operational objectives specified above, implies an investment horizon. For intergenerational funds

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<sup>57</sup> In the latter case, the fund would essentially work as a buffer, preventing too much money from entering the country’s economy all at once.

<sup>58</sup> Some countries, particularly resource-rich states, signaled in 2007 that they believed they were overly invested in U.S. dollars and intended to diversify these holdings profitably through investments made by SWFs. Member states of OPEC, the Organization of the Petroleum Exporting Countries, have discussed the issue and said they will study whether oil should be priced in a currency other than dollars, to help them scale back their dollar holdings. The urgency of this debate lost steam during the second half of 2008, however, as the dollar rose against several other major currencies.

<sup>59</sup> Helmut Reisen, 2008, Oecd Development Centre, POLICY BRIEF No. 38 “How to Spend It Commodity and Non-Commodity Sovereign Wealth Funds”, pp. 9-10.

<sup>60</sup> Global Financial Stability Report, October 2007, IMF Analysis, pp.46-47.

<sup>61</sup> By volatile commodity, we usually mean oil.

and pension funds the horizon is typically very long, for stabilization funds the horizon is relatively short, depending on the average commodity price cycle. For return focused funds, the time horizon is more fluid and depends on whether the focus is on keeping the funds forever (endowments), or on depleting the funds through interventions/withdrawals.

In practice, there are also other uncertainties that need to be taken into account in deriving the investment horizon. In particular, the size of reserves of natural resources may be uncertain or there may be unusual (politically motivated) claims on the funds. Typically these forces work in opposite directions. Resources that are depleted are often replaced by discoveries of new deposits, especially in larger countries, and this lengthens the time horizon. Over the existence of the fund there may be political changes with parties taking a dimmer view on the need to save for future generations, which uncertainties reduce the investment horizon. These arguments can be reflected by assigning a larger discount rate to future inflows (effectively assigning a lower probability to them), or by taking a more agnostic approach and reducing the investment horizon, thus reducing the horizon over which one is maximizing the return<sup>62</sup>.

The ultimate responsibility for the performance on the assets managed externally is entirely that of the SWF. The SWF or the government still bears all the risk—market, credit, and liquidity risks—no matter whether assets are managed internally or externally. Accordingly, the SWF should make sure that the risks taken by external managers are within the SWF's overall tolerance for these risks. In particular, the strategic asset allocation, reflected in clear benchmarks for the currency composition and investment risk profile<sup>63</sup> remains the SWFs owner's responsibility.

The risk parameters that are to be used to measure and report on risks should be clearly specified, as well as the instruments that the external managers are allowed to use. It is crucial that the risks involved in the portfolios managed externally are

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<sup>62</sup> Udaibir S. Das, Yinqiu Lu, Christian Mulder, and Amadou Sy, 2009, "Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations", pp. 4-5.

<sup>63</sup>By risk profile, we mean: duration, credit, etc.

evaluated in conjunction with the risks on portfolios that are internally managed, so that a global view of the risks of the SWF is obtained<sup>64</sup>.

The risk tolerance is a key constraint on the maximization of the expected return over the investment horizon. The risk constraint is based on the ultimate stakeholders' willingness and ability to take risk. Ideally, the risk preference focuses on the entire investment horizon, and can take the form of a maximum acceptable deviation at the points of withdrawals and the risk/return trade offs at these points. In other words, there is less of a need to be concerned about daily volatility if the investment horizon is a year. For example, the value of the investment can increase and decrease daily by 10 percent but the key aspect is the value in a year's time when the withdrawal takes place<sup>65</sup>.

However, in practice, investors may have some concerns about short-term volatility. A typical constraint in new SWFs is therefore the sponsor's desire to preserve capital. A capital preservation objective is equivalent to zero tolerance for negative returns, in either nominal or real terms. If formulated with regard to the start of the Fund this constraint has a time dimension: over time a buffer is built up to allow more risk. In other words, adding this constraint of capital preservation allows an easing into a risk tolerance that is more reflective of the real investment horizon. In this regard, an early start with investing resources to build up a buffer, having an oversight body with experienced and respected professionals, and educating lay stakeholders can help limit the cost imposed by this additional constraint<sup>66</sup>.

### **1.5 Impacts**

At this point, can be deducted the impact of SWFs on the economy and the society in general. More specifically, through their emergence, it is witnessed a major rebalancing of the wealth of nations. SWFs have become prominent and important players in many financial markets. But we should not exaggerate their impact on the

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<sup>64</sup> Udaibir S. Das, Yinqiu Lu, Christian, Mulder, and Amadou Sy, 2009, "Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations", pp. 18.

<sup>65</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp.5-6, 9-11, 14.

<sup>66</sup> Udaibir S. Das, Yinqiu Lu, Christian, Mulder, and Amadou Sy, 2009, "Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations", pp. 4-5.

global financial system. In aggregate, their assets under management are currently only less than one-twentieth of those held by private sector participants such as pension, insurance and mutual funds as well as hedge funds and private equity. And they account for about 2% of the total size of equity and bond markets globally. Even in five years time – and on some of the fastest growth projections – assets under management by SWFs are projected to reach only about 6% of global financial assets<sup>67</sup>. Moreover, though they have more assets under management than hedge funds they have smaller investments since they are not leveraged<sup>68, 69</sup>.

### **1.5.1 Impacts on Financial Markets**

Transfers of sizeable amounts of traditional foreign exchange reserves into SWFs may have also an impact on global capital flows since such funds are likely to pursue an investment strategy that differs considerably from that of central banks. Whether SWFs could have an impact on financial stability will depend critically on the motives underlying the investment decisions of such funds. In fact, provided that these funds pursue only financial objectives, SWFs may contribute to a widening of the long-term investor base for risky assets. In this regard, measures aimed at restricting capital flows into developed countries entail the risk of curtailing these benefits<sup>70</sup>.

A key question is how SWFs affect policy and policy coordination in the domestic economy. SWFs' assets, and the returns they generate, are likely to have a significant impact on a country's public finances, monetary conditions, the balance of payments, and balance-sheet linkages. They may also affect public sector wealth, and have implications on private sector's behaviour. Well-designed SWFs can support sound fiscal and monetary policies, and mitigate Dutch disease effects. At the same time, SWFs may also create macroeconomic policy challenges, and appropriate coordination between the SWF and the fiscal and monetary authorities. At least four

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<sup>67</sup> Morgan Stanley, 31 May 2007, "Sovereign Wealth Funds and Bond and Equity Prices".

<sup>68</sup> John Gieve, 14 March 2008, Sovereign wealth funds and global imbalances, pp. 3-4.

<sup>69</sup> That said, the assets held by SWFs are highly concentrated, with around 70% of total assets held by the five largest funds. So the largest sovereign wealth funds could have an impact on some markets especially smaller ones such as other EMEs.

<sup>70</sup> ECB Monthly Bulletin, January 2009, pp. 85.

policy angles are relevant: fiscal policy, monetary policy, balance sheet implications, and external stability<sup>71</sup>.

Another key question is how SWFs affect global financial markets<sup>72</sup>. SWFs can play a stabilizing role in global financial markets. First, it is highlighted that as long-term investors with no imminent call on their assets, and with mainly unleveraged positions, SWFs are able to sit out longer during market downturns or even go against market trends. Second, large SWFs may have an interest in pursuing portfolio reallocations gradually so as to limit adverse price effects of their transactions. Third, SWFs' investments may enhance the depth and breadth of markets. Fourth, SWFs could, as long-term investors and by diversifying the global investor base, contribute to greater market efficiency and lower volatility. Currently, SWFs are generally not regarded as highly leveraged and there is little evidence of sudden shifts in portfolio allocations.

Additionally, significant effects may be felt on mature sovereign debt markets<sup>73</sup>. First, SWFs may increasingly diversify their existing portfolio away from low-risk, short-term instruments, such as U.S. Treasury bills, and into longer-term equity stakes. This may affect interest rates and equity prices. Second, if SWFs diversify away from dollar holdings, and invest more in line with global equity indices, a decline in capital inflows into the United States may cause an increase in real interest rate differentials and dollar depreciation.

However, at present the above effect appears to have been offset to some degree by the announced large injections of capital into the U.S. banking sector. In the rest of the world, higher capital inflows would lead to lower real interest rates, more appreciated currencies in real effective terms, and higher domestic demand. Estimates of this sort are inevitably subject to many caveats: these include uncertainties over shifts in asset allocation, and the fact that the reactions of other investors are not taken

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<sup>71</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp. 11-14.

<sup>72</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp. 11-14.

<sup>73</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp. 11-14.

into account. But they demonstrate the likely direction of the effects, also supported by separate research based on a gravity model and other studies<sup>74</sup>.

### **1.5.2 Impacts on Fiscal Policy**

An SWF can be a useful fiscal policy tool, provided that it is well-integrated in a sound overall fiscal management framework. In particular, SWFs can facilitate fiscal stabilization, and/or the saving of fiscal resources for long-term purposes<sup>75</sup>. They can also introduce more professional and comprehensive investment and risk management frameworks, and enhance the transparency and accountability in the management of government financial assets. Sound management of an SWF can result in higher risk-adjusted returns and could help to reduce or eliminate the opportunity costs of reserves holdings.

However, SWFs may also pose fiscal risks when they are poorly managed. International experience has shown that oil funds with rigid operational rules and the authority to spend independently, or those that are involved in quasi-fiscal activities, have led to a fragmentation of the budget process. This has potential negative implications for the efficiency and transparency of resource allocation and cash management, in particular when control and monitoring mechanisms are weak<sup>76</sup>. Moreover, since SWFs can potentially generate losses, the fiscal authorities, given their fiduciary role, have a direct stake in ensuring an adequate risk profile and sound management of their SWFs. Finally, SWFs need to be taken into account in public sector solvency and debt sustainability assessments.

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<sup>74</sup> Foreign official investors are estimated to have kept 10-year U.S. Treasury nominal yields 100 bps lower than otherwise. “International Capital Flows and U.S. Interest Rates,” NBER Working Paper 12560, Francis E. Warnock and Veronica C. Warnock, October 2006. Morgan Stanley estimates that over the next decade bond yields may rise by 30–40 basis points, while the equity risk premium falls by 50–70 basis points (Morgan Stanley: “Economics and Currencies—Sovereign Wealth Funds and Bond and Equity Prices,” May 2007).

<sup>75</sup> E.g. preparing for population aging or facilitating intergenerational transfers.

<sup>76</sup> See “The Role of Fiscal Institutions in Managing the Oil Revenue Boom”, March 5, 2007, [www.imf.org/external/np/pp/2007/eng/030507.pdf](http://www.imf.org/external/np/pp/2007/eng/030507.pdf).

### **1.5.3 Impacts on Monetary Policy**

As concerns the monetary policy<sup>77</sup>, in some circumstances, the activities of SWFs could have a bearing on the exchange rate as investment abroad, followed by the repatriation of returns, involving currency transactions. If SWFs have discretion over whether they invest domestically or abroad, then decisions over investments will require careful coordination with the monetary authorities. Otherwise, a sizeable shift from foreign into domestic assets would pose difficulties for the monetary authorities' sterilization operations. Possible SWF investments in domestic assets also raises an additional set of issues as they add to domestic demand, can cause local asset price bubbles, and may complicate monetary policy by injecting liquidity into the system.

### **1.5.4 Impacts on External Stability**

SWFs may also have important implications for the assessment of members' external stability<sup>78</sup> both in the current and capital account. These are relevant for both the surveillance of countries with SWFs and for countries that receive large SWF inflows. For countries with SWFs, the SWF is likely to be a key part of the assessment of external stability which requires the country's net external asset position to be evolving in a manner consistent with the country's structure and fundamentals, usually measured by the underlying current account. For commodity exporters, it may be appropriate to run transitory current account surpluses during the period in which the resources are being extracted and exported, and to draw down the assets after the resources have been exhausted. So, the impact of transitory price shocks and the depletion of natural resources need to be taken into account when forming a view on a country's external stability position.

For other countries with SWFs—where the accumulation of net foreign assets may in some cases be related to exchange rate policies—the assessment of external stability is likely to be less affected by swings in commodity prices. In these cases,

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<sup>77</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp. 11-14.

<sup>78</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, "Sovereign Wealth Funds—A Work Agenda", pp. 11-14.

exchange rate policies may be aimed at an export-oriented development strategy or a desire to self-insure against economic and financial risks. The assessment of external stability would need to consider reserve adequacy.

For countries that receive SWF inflows, these flows are likely to affect the capital and financial account, and relative prices, and thus may affect external stability. A better understanding of the character and motive of SWF-related inflows may lead to a better policy reaction, and could alleviate concerns that such flows might suddenly reverse. While the challenges in managing these capital flows will be small for large advanced economies, they may be acute for small open economies<sup>79</sup>, and for economies with nascent capital markets.

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<sup>79</sup> If these flows are large relative to total capital flows.



## **CHAPTER 2: Size and issues around SWFs**

### **2.1 SWFs' approximate size**

Over the past decade SWFs have grown rapidly. Originally, they were confined to a limited number of countries. Today, more than thirty countries have SWFs, with twenty new SWFs created since 2000. Sustained surpluses for the oil producing and Asian economies have led to reserves well beyond the needs of exchange rate management. Some of these reserves have been channelled into SWFs.

The assets managed by SWFs are estimated at \$ 1.5–2.5 trillion –equivalent to about half of global official reserves, or the combined assets of all hedge funds and private equity firms. This makes SWFs a small but significant share of the global equity market capitalisation of \$ 50 trillion. Even if estimates of the SWFs future scale differ, it is clear that the growth trend will continue<sup>80, 81</sup>.

The 14 largest SWFs are estimated to have approximately USD 2.2 trillion under management. Some market estimates put combined assets as high as 3.5 trillion dollars<sup>82</sup>. The estimated combined assets of the world's 14 largest SWFs now constitute nearly half the size of the world's total official foreign exchange reserves.

Since 2005, at least 17 SWFs have been created. As other countries grow their currency reserves they will seek greater returns. Their growth has also been skyrocketed by rising commodity prices especially oil and gas, specifically between the years of 2003 - 2008<sup>83</sup>.

The map<sup>84</sup>, below, and the diagram on table 1, depict the regions around the world that use SWFs as investment vehicles.

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<sup>80</sup> Commission Of The European Communities, Communication From The Commission to the European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Brussels 2008, "A common European approach to Sovereign Wealth Funds", pp. 4.

<sup>81</sup> Some forecasts predict a fourfold increase in the next decade, putting the possible scale of SWFs at \$ 12 trillion by 2015.

<sup>82</sup> Morgan Stanley, Standard Chartered, Deutsche Bank and Merrill Lynch all recently produced estimates, ranging from USD 2.5 to 3.5 trillion.

<sup>83</sup> See appendix pp. 88.

<sup>84</sup> Available at: <http://www.swfinstitute.org/research/commoditiesswf.php>.

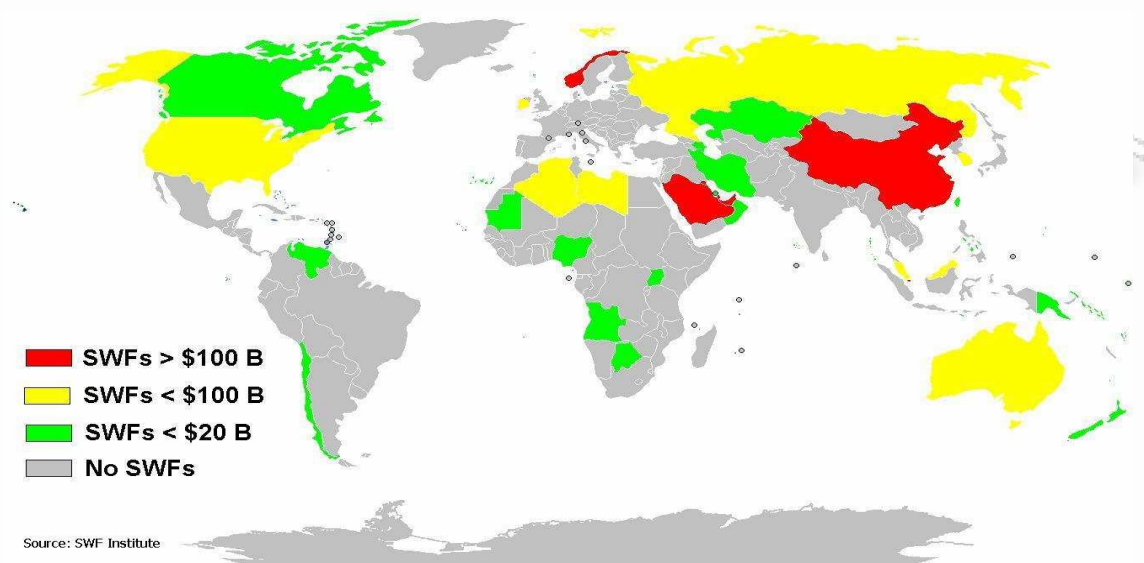
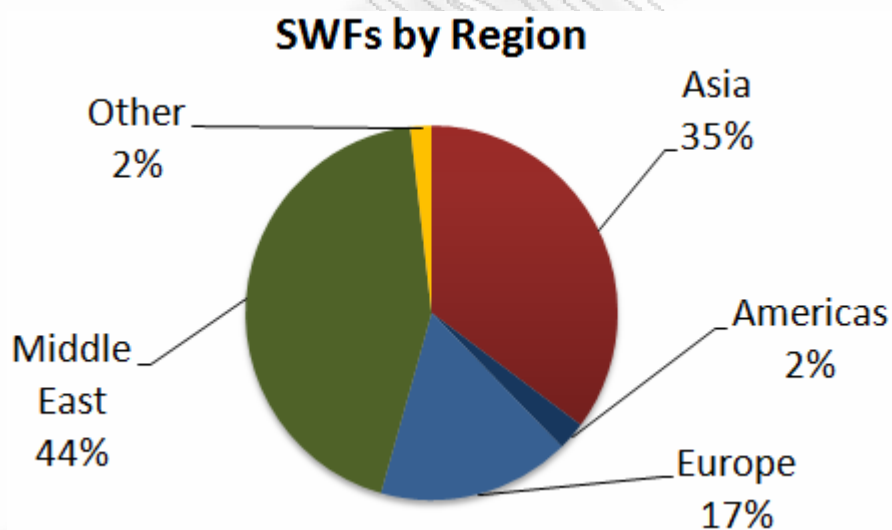


Table 1<sup>85</sup>:



The emergence of SWFs should be seen in this broader perspective: financial actors from developing countries are playing with other OECD financial giants as equals. These new global players are no longer headquartered in The City of London, or in the Boston or New York financial districts but in hitherto more exotic places like Beijing, Singapore or Dubai. They already represent sizeable global financial

<sup>85</sup> Available at: <http://www.swfinstitute.org/research/commoditiesswf.php>.

players. The largest SWF, from United Arab Emirates, Kuwait and China, for example, have reached the same scale as the largest global asset managers or the biggest hedge funds and private equity firms.

Typically, the largest SWFs with assets of more than USD 100bn (heavy SWFs) are either from oil exporting countries or from East Asia. They form part of the respective country's national total capital which is defined as the sum of net financial assets, the physical capital stock<sup>86</sup>, the unused (clean) environment, human capital and unexploited natural resources. Extracting and selling oil amounts to running down capital, unless the receipts are fully reinvested in financial, physical, environmental or human capital. Thus, "genuine" savings would be negative, unless exhaustible resources are fully reinvested, as oil-rich countries would deplete their total capital. The World Bank (2006) has calculated that many resource-abundant economies have negative "genuine" saving rates and are becoming poorer each year<sup>87</sup>.

The following table presents the countries which use SWFs and their size in USD millions<sup>88</sup>.

**Table 2<sup>89</sup>:**

Rank	Country/Monetary Authority	Foreign Exchange Reserves (USD Millions)	Last Updated
—	<b>World</b> (sum of all countries)	\$ 7,520,566	--
1	People's Republic of China (not including Hong Kong & Macau which have different currencies)	\$ 2,131,600	Jun 2009
2	Japan	\$ 1,044,327	Jul 2009

<sup>86</sup> E.g. real estate, machines, plantations.

<sup>87</sup> Helmut Reisen, 2008, "How to Spend It: Commodity and Non-Commodity Sovereign Wealth Funds" POLICY BRIEF No. 38, pp.7-8.

<sup>88</sup> Although foreign exchange reserves are commonly measured in USD, recent dollar devaluation against other reserve currencies does not necessarily reflect an improvement of finances.

<sup>89</sup> Source: Sovereign Wealth Fund Institute, IMF, and other Governmental Sources.

3	Russia	\$ 435,400	Dec 2008
—	Eurozone (EU member states which have adopted the EURO, incl. ECB)	\$ 569,213	Feb 2008
	Saudi Arabia	\$ 395,467	May 2009
4	India	\$ 313,354	Apr 2008
5	Taiwan	\$ 286,860	Mar 2008
6	South Korea	\$ 264,300	Mar 2008
7	Brazil	\$ 223,713	Sep 2009
8	Singapore	\$ 168,802	Sep 2008
9	Hong Kong	\$ 160,700	Mar 2008
10	Germany	\$ 150,377	Mar 2008
11	Algeria	\$ 126,905	Mar 2008
12	France	\$ 113,058	Aug 2008
13	Malaysia	\$ 122,000	Apr 2008
14	Thailand	\$ 109,400	Apr 2008
15	Algeria	\$ 126,905	Mar 2008
14	United Kingdom	\$ 99,956	Mar 2008
16	Italy	\$ 106,843	Feb 2008
17	Mexico	\$ 79,925	Jan 2008
18	Turkey	\$ 73,300	Dec 2007
19	Switzerland	\$ 70,481	Sep 2007
20	Iran	\$ 70,000	Jan 2008
21	United States	\$ 69,668	Oct 2007
22	Libya	\$ 65,510	Dec 2007
23	Norway	\$ 45,117	Aug 2009
24	Poland	\$ 58,311	Sep 2007
25	Australia	\$ 33,394	Feb 2008

26	Indonesia	\$ 58,299	Mar 2008
—	European Central Bank (ECB, reserves not wholly owned by any single EU member)	\$ 65,543	Feb 2008
27	Nigeria	\$ 59,700	Mar 2008
28	Argentina	\$ 42,891	Sep 2007
29	Canada	\$ 43,057	Mar 2008
30	Romania	\$ 38,203	Sep 2007
31	Denmark	\$ 35,941	Sep 2007
32	Czech Republic	\$ 34,909	Dec 2007
33	Philippines	\$ 33,700	Dec 2007
34	Ukraine	\$ 32,768	Nov 2007
35	Venezuela	\$ 32,723	Mar 2008
36	South Africa	\$ 31,761	Oct 2007
37	Egypt	\$ 31,140	Dec 2007
38	Sweden	\$ 29,330	Jun 2007
39	Israel	\$ 28,423	Dec 2007
40	United Arab Emirates	\$ 29,620	Dec 2007
42	Netherlands	\$ 23,337	Jun 2007
43	Hungary	\$ 22,913	Jun 2007
44	Morocco	\$ 22,409	Jun 2007
45	Peru	\$ 20,977	Jun 2007
46	Kuwait	\$ 19,630	Dec 2007
47	Colombia	\$ 20,553	Sep 2007
48	Vietnam	\$ 20,000	Sep 2007
49	Lebanon	\$ 19,400	Dec 2007
50	Kazakhstan	\$ 19,250	Dec 2007
51	Chile	\$ 22,240	Dec 2007

52	Slovakia	\$ 17,598	Jun 2007
53	Bulgaria	\$ 17,400	Dec 2007
54	Spain	\$ 17,384	Jun 2007
55	Serbia	\$ 16,067	Dec 2007
56	Iraq	\$ 15,650	2006 est.
57	Pakistan	\$ 15,370	Jan 2008
58	New Zealand	\$ 15,566	May 2007
59	Austria	\$ 13,702	Jun 2007
60	Belgium	\$ 13,467	May 2007
61	Croatia	\$ 13,400	Nov 2007
62	Macau	\$ 12,500	Oct 2007
63	Angola	\$ 12,290	Oct 2007
64	Portugal	\$ 9,826	Jun 2007
65	Yemen	\$ 8,636	Apr 2007
66	Botswana	\$ 10,023	Nov 07
67	Trinidad and Tobago	\$7,254	Apr 2007
68	Finland	\$8,185	Nov 2007
69	Tunisia	\$ 6,835	Jun 2007
70	Jordan	\$ 6,392	Mar 2007
71	Lithuania	\$ 6,139	Jun 2007
72	Oman	\$ 7,004	Dec 2007
73	Syria	\$ 5,500	2006 est.
74	Bangladesh	\$ 5,490	Jan 2008
75	Qatar	\$ 8,368	Dec 2007
76	Latvia	\$ 4,928	Jun 2007
77	Cyprus	\$ 4,709	Apr 2007
78	Guatemala	\$ 4,253	May 2007
79	Bolivia	\$ 3,900	Jun 2007

80	Sudan	\$ 1,245	Dec 2007.
81	Uruguay	\$ 3,527	May 2007
82	Turkmenistan	\$ 3,644	Dec 2007
83	Bahrain	\$ 3,474	Dec 2007.
84	Equatorial Guinea	\$ 3,235	2006 est.
85	Malta	\$ 3,065	2006 est.
86	Uzbekistan	\$ 2,986	2006 est.
87	Greece	\$ 2,831	Jun 2007
88	Estonia	\$ 2,824	Jun 2007
89	Sri Lanka	\$ 2,810	2006 est.
90	Honduras	\$ 2,778	2006 est.
91	Bosnia and Herzegovina	\$ 2,700	2006 est.
92	Kenya	\$ 2,680	Apr 2007
93	Cuba	\$ 2,618	2006 est.
94	Ecuador	\$ 2,514	2006 est.
95	Costa Rica	\$ 2,500	2006 est.
96	Tanzania	\$ 2,375	2006 est.
97	Belarus	\$ 2,344	Jun 2007
98	Iceland	\$ 2,314	Jun 2007
99	Jamaica	\$ 2,150	2006 est.
100	Dominican Republic	\$ 2,106	2006 est.
101	Ghana	\$ 2,098	2006 est.
102	El Salvador	\$ 2,046	Apr 2007
103	Burma	\$ 2,000	Jan 2008
104	Papua New Guinea	\$ 1,852	Jul 2007
105	Republic of Macedonia	\$ 1,845	2006 est.
106	Albania	\$ 1,812	Dec 2006
107	Azerbaijan	\$ 4,000	Dec 2007

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108	Cambodia	\$ 1,600	Dec 2007
109	Paraguay	\$ 1,543	2006 est.
110	Côte d'Ivoire	\$ 2,500	Dec 2007
111	Uganda	\$ 1,400	2006 est.
112	Mauritius	\$ 1,358	2006 est.
113	Mozambique	\$ 1,470	Nov 2007
114	Cameroon	\$ 1,336	2006 est.
115	Burkina Faso	\$ 1,328	2006 est.
116	Georgia	\$ 1300	Jun 2007
117	Armenia	\$ 1,270	Aug 2007
118	Panama	\$ 1,260	Dec 2007
119	Slovenia	\$ 1,204	May 2007
120	Ethiopia	\$ 840	Dec 2007
121	Senegal	\$ 1,180	2006 est.
122	Zambia	\$ 1,050	2006 est.
123	Kyrgyzstan	\$ 893	May 2007
124	Moldova	\$ 879	Jun 2007
125	Ireland	\$ 842	May 2007
126	Gabon	\$ 835	2006 est.
127	Nicaragua	\$ 723	2006 est.
128	Benin	\$ 607	2006 est.
129	Madagascar	\$ 563	2006 est.
130	Congo	\$ 547	2006 est.
131	Lesotho	\$ 528	2006 est.
132	Namibia	\$ 480	2006 est.
133	Rwanda	\$ 423	2006 est.
134	Chad	\$ 353	2006 est.
135	Togo	\$ 334	2006 est.



136	Laos	\$ 317	2006 est.
137	Guyana	\$ 295	2006 est.
138	Luxembourg	\$ 259	May 2007
139	Swaziland	\$ 228	2006 est.
140	Tajikistan	\$ 209	2006 est.
141	Malawi	\$ 176	2006 est.
142	Cape Verde	\$ 166	2006 est.
143	Zimbabwe	\$ 140	2006 est.
144	Haiti	\$ 123	2006 est.
145	Gambia	\$ 88	2006 est.
146	Burundi	\$ 88	2006 est.
147	Belize	\$ 79	2006 est.
148	Samoa	\$ 70	2004 est.
149	Guinea	\$ 60	2006 est.
150	Seychelles	\$ 45	2006 est.
151	Tonga	\$ 41	2005 est.
152	Vanuatu	\$ 41	2003 est.
153	Eritrea	\$ 31	2006 est.
154	São Tomé and Príncipe	\$ 25	2006 est.

Firstly, it can be deducted from the above, that SWFs are, for the most part, emerging market institutions. Only 19% of them are from OECD and developed countries. The majority are from the Middle East and Asia. They are key engines of development finance within their homelands and some are very explicitly involved in national strategies of industrial diversification. This is the case of Malaysia's Khazanah, which is actively involved in financing long term projects and infrastructures throughout the country<sup>90</sup>. The same applies for Kazyna, one of Kazakhstan's SWFs, mandated to promote innovative industrial projects and

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<sup>90</sup> Radhi, 2008.

contribute to diversification toward more value added and employment-intensive industries for the oil rich country<sup>91</sup>. This is also the case of their private equity arms, sophisticated financial institutions like Mubadala from Abu Dhabi or Istithmar from Dubai, in the Gulf – who consider themselves however as private investors rather than sovereign funds.

Secondly and even more interestingly, SWF have not only become major development finance institutions in their own countries, but are also becoming major players of development throughout the developing world. Although recent stakes in big OECD banks have dominated newspaper headlines and SWF bailouts of Western financial institutions were indeed striking<sup>92</sup>, sovereign funds' bets on emerging economies are in fact equally significant. Some of SWFs' biggest investments have taken place in developing countries in Asia, Africa or Latin America, with the likelihood of this increasing in the future<sup>93</sup>.

## **2.2 Asset allocation**

On average SWFs' asset allocation is split between fixed income securities (35-49%), equity securities in listed corporations (50-55%) and the remaining (8-10%) in alternative investments such as hedge funds, private equity companies or other products<sup>94</sup>. This is an average estimation and obviously strategies diverge importantly between institutions. In the case of Norway, for example, equities accounted in 2007 for 40% of the fund's strategic benchmark portfolio and consisted mainly in Europe-listed equities (50%), America and Africa (35%) and Asia/Oceania (15%). Fixed income accounted for the remaining 60%, denominated mostly in currencies from Europe (60%), America and Africa (35%) and Asia/Oceania (5%)<sup>95</sup>. In the case of the National Oil Fund of Kazakhstan, inspired by Norway's experience, assets were split into stabilisation and savings portfolios. The stabilisation portfolio has been mainly invested in high liquid money market instruments while the savings

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<sup>91</sup> Nurbek, 2008.

<sup>92</sup> Totaling 35 billion by the end of 2007.

<sup>93</sup> Helmut Reisen, January 2008, "How to Spend it: Sovereign Wealth Funds and the Wealth of Nations", OECD Development Centre, Policy Insight.

<sup>94</sup> Fernández and Eschweiler, 2008.

<sup>95</sup> Kjaer, 2008.

portfolio has been invested mostly in fixed income instruments (75%), but also equities (25%)<sup>96, 97</sup>.

The largest SWFs have more assets under management than the world's biggest hedge funds, though they continue to command significantly less market exposure than the largest global asset managers. As regards the relative size of SWFs, total assets are relatively small compared with the more than USD 50,000 billion managed by the private asset management industry.

However, the largest SWFs, currently, already manage portfolios that are in the order of magnitude of the biggest private investment companies and could in the future – to the extent that external surpluses are increasingly accumulated in SWFs or that existing reserves are shifted into such funds – even exceed the largest private investment managers' portfolios.

Oil exporters, mostly from the Middle East, but also Norway's Government Pension Fund, are estimated to account for the largest part of total assets managed by SWFs. A smaller fraction, of around USD 600 billion, is accounted for by Asian emerging economies, most notably Singapore, which has been running SWFs since the 1970s. But also mature economies, other than Norway, have set up SWFs, mostly to save receipts from the exploitation of natural resources. In sum, a plausible estimate of total assets managed by SWFs ranges from USD 2,000 to 3,000 billion<sup>98</sup>.

The following table<sup>99</sup> presents the amount of assets of SWFs in billion USD, their inception, origin, SWF to foreign exchange reserve ratio and Linaburg- Maduell transparency index<sup>100</sup>.

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<sup>96</sup>Javier Santiso, October 2008, "Sovereign Development Funds: Key financial actors of the shifting wealth of nations", pp.6-10.

<sup>97</sup> Sartbayev, Izabasarov, 2008.

<sup>98</sup> ECB Monthly Bulletin, January 2009, "Foreign Asset Accumulation by Authorities in Emerging Markets, pp.82-85.

<sup>99</sup> Available at <http://www.swfinstitute.org/research/transparencyindex.php>.

<sup>100</sup> The Linaburg-Maduell transparency index is a method of rating transparency in respect to sovereign wealth funds.

**Table 3<sup>101</sup>:**

Country	Fund Name	Assets \$Billion	Inception	Origin	SWF to Foreign Exchange Reserve Ratio	Linaburg- Maduell Transparency Index
UAE - Abu Dhabi	<a href="#">Abu Dhabi Investment Authority</a>	\$627	1976	Oil	13.9	3
Norway	<a href="#">Government Pension Fund – Global</a>	\$445	1990	Oil	8.8	10
Saudi Arabia	<a href="#">SAMA Foreign Holdings</a>	\$431	n/a	Oil	1.1	2
China	<a href="#">SAFE Investment Company</a>	\$347.1**		Non- Commodity	0.2	2
China	<a href="#">China Investment Corporation</a>	\$288.8	2007	Non- Commodity	0.1	6
Singapore	<a href="#">Government of Singapore Investment Corporation</a>	\$247.5	1981	Non- Commodity	1.4	6
Kuwait	<a href="#">Kuwait Investment Authority</a>	\$202.8	1953	Oil	10.6	6
Russia	<a href="#">National</a>	\$178.5*	2008	Oil	0.4	5

<sup>101</sup> See appendix pp. 89.

Welfare Fund

China	<a href="#">National Social Security Fund</a>	\$146.5	2000	Non-commodity	nil	5
China - Hong Kong	<a href="#">Hong Kong Monetary Authority Investment Portfolio</a>	\$139.7	1993	Non-Commodity	1.0	8
Singapore	<a href="#">Temasek Holdings</a>	\$122	1974	Non-Commodity	0.7	10
Libya	<a href="#">Libyan Investment Authority</a>	\$65	2006	Oil	0.8	2
Qatar	<a href="#">Qatar Investment Authority</a>	\$65	2003	Oil	8.6	5
Australia	<a href="#">Australian Future Fund</a>	\$49.3	2004	Non-Commodity	1.8	9
Algeria	<a href="#">Revenue Regulation Fund</a>	\$47	2000	Oil	0.3	1
Kazakhstan	<a href="#">Kazakhstan National Fund</a>	\$38	2000	Oil	1.1	6
Ireland	<a href="#">National Pensions Reserve Fund</a>	\$30.6	2001	Non-Commodity	36.6	10
Brunei	<a href="#">Brunei Investment Agency</a>	\$30	1983	Oil		1
France	<a href="#">Strategic</a>	\$28	2008	Non-	0.2	new

Azerbaijan	<a href="#">State Oil Fund</a>	\$11.9	1999	Oil	0.6	10
US - New Mexico	<a href="#">New Mexico State Investment Office Trust</a>	\$11.7	1958	Non-Commodity	0.2	9
Canada	<a href="#">Alberta's Heritage Fund</a>	\$11.1	1976	Oil	0.4	9
Nigeria	<a href="#">Excess Crude Account</a>	\$9.4	2004	Oil	0.2	1
New Zealand	<a href="#">New Zealand Superannuation Fund</a>	\$8.6	2003	Non-Commodity	0.8	10
Brazil	<a href="#">Sovereign Fund of Brazil</a>	\$8.6	2009	Non-commodity	nil	new
Oman	<a href="#">State General Reserve Fund</a>	\$8.2	1980	Oil & Gas	0.3	1
Botswana	<a href="#">Pula Fund</a>	\$6.9	1996	Diamonds & Minerals	0.7	1
Saudi Arabia	<a href="#">Public Investment Fund</a>	\$5.3	2008	Oil	nil	3
China	<a href="#">China-Africa Development Fund</a>	\$5.0	2007	Non-Commodity	nil	4
East Timor	<a href="#">Timor-Leste Petroleum Fund</a>	\$4.2	2005	Oil & Gas	n/a	6
US - Wyoming	<a href="#">Permanent Wyoming Mineral Trust</a>	\$3.6	1974	Minerals	nil	9

Malaysia	<a href="#">Fund</a> <a href="#">1Malaysia Development Berhad</a>	\$3.1	2008	Oil	nil	5
Trinidad & Tobago	<a href="#">Heritage and Stabilization Fund</a>	\$2.9	2000	Oil	n/a	5
UAE - Ras Al Khaimah	<a href="#">RAK Investment Authority</a>	\$1.2	2005	Oil	X	3
Venezuela	<a href="#">FIEM</a>	\$0.8	1998	Oil	nil	1
Vietnam	<a href="#">State Capital Investment Corporation</a>	\$0.5	2006	Non-Commodity	0.1	4
Kiribati	<a href="#">Revenue Equalization Reserve Fund</a>	\$0.4	1956	Phosphates	n/a	1
Indonesia	<a href="#">Government Investment Unit</a>	\$0.3	2006	Non-commodity	X	X
Mauritania	<a href="#">National Fund for Hydrocarbon Reserves</a>	\$0.3	2006	Oil & Gas	X	1
UAE - Federal	<a href="#">Emirates Investment Authority</a>	X	2007	Oil	X	2
Oman	<a href="#">Oman Investment</a>	X	2006	Oil	X	n/a

	<u>Fund</u>					
UAE - Dubai	<u>Dubai World</u>	X	2006	Oil	X	n/a
	Total Oil & Gas Related	\$2,245.8				
	Total Other	\$1,565.9				
	<b>TOTAL</b>	<b>\$3,811.7</b>				

\*This includes the oil stabilization fund of Russia.

\*\*This number is best guess estimation.

\*\*\*All figures quoted are from official sources, or, where the institutions concerned do not issue statistics of their assets, from other publicly available sources. Some of these figures are best estimates as market values change day to day<sup>102</sup>.

### **2.3 Issues relating to SWFs' investments**

#### **2.3.1 Which are the benefits?**

SWFs have much to offer. Their gradual rise could, in theory, be broadly positive. More efficient government investment potentially means more government money. For the countries making the investments, this could translate into lower taxes, better public works and stronger state-run businesses. For resource-exporting states concerned about long-term economic viability, SWFs also present a possible source of sustainable long-term capital growth. For the companies being purchased, and the countries in which they are located, capital inflows can also be a net positive. More capital means more money for research and development, and more money to pay salaries<sup>103</sup>.

<sup>102</sup> Updated October 2009.

<sup>103</sup> Policy paper published by the University of Pennsylvania's Wharton Business School, November 2007, available at <http://www.cfr.org/publication/15251/>.



SWFs' recent injections of capital into several OECD financial institutions were stabilising because they came at a critical time when risk-taking capital was scarce and market sentiment was pessimistic. They help to recycle savings internationally and generally have a good track record as long-term investors. They contribute to the economic development of their home countries; for example, they help to shield their economies from volatility in commodity markets, improve the risk-return profile of government-controlled portfolios and may boost financial and fiscal management capacities. In recipient countries, SWFs can also bring the benefits normally associated with foreign investment such as stimulating business activity and creating jobs<sup>104</sup>.

As far as, home countries are concerned, they facilitate the saving and intergenerational transfer of proceeds from non renewable resources exports and help reduce boom and bust cycles driven by changes in commodity prices. They also allow for a greater portfolio diversification and focus on return.

From the viewpoint of international financial markets, SWFs can facilitate a more efficient allocation of revenues from commodity surpluses across countries and enhance market liquidity, including times of global financial stress. They could, also, contribute to a widening of the long-term investor base for non-government securities, including corporate bonds, private equity, emerging market assets, real estate and commodities, and more efficient sharing and diversification of risk, greater market efficiency, lower volatility, and increased depth of markets at the global level. Such positive effects on the global financial system will, however, only materialise if investments by SWFs are only driven by financial and not political motives<sup>105, 106</sup>.

Taking a broader view, the switch of some reserves from government debt into SWFs which invest in a wider range of instruments should help to improve the allocation of resources if these investments are based on commercial criteria. Investing in equities may also help to reinforce and bring to the surface the common interest that EMEs and the advanced economies have in the good performance of the companies involved and the markets they operate in. It may thus help to integrate

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<sup>104</sup> OECD – Investment Committee Report, 4 April 2008, “Sovereign Wealth Funds And Recipient Country Policies”, pp. 2-3.

<sup>105</sup> ECB Monthly Bulletin, January 2009, “ Foreign Asset Accumulation By Authorities In Emerging Markets”, pp. 80-84.

<sup>106</sup> Available at <http://www.imf.org/external/np/sec/pn/2008/pn0841.htm>.

EMEs into the global financial system and encourage them to participate more in global policy making<sup>107</sup>.

Another potential benefit associated with the SWFs, which is of specific relevance to the European Union<sup>108</sup>, relates to the euro. Given the tendency towards a diverse range of investment, SWF investment could support the international role of the euro over the medium term. For foreign exchange reserves, the goal is liquid and safe assets denominated in a currency with low foreign exchange conversion costs – which tends to favour the US dollar. SWFs have more freedom to choose their investments. This is likely to mean a higher share of the euro assets than now is the case for reserves<sup>109</sup>.

As can be deduced from the above, SWFs serve two main purposes:

1. **Consumption smoothing**, e.g. Norway's Government Pension Fund invests oil revenues to provide returns for future generations of Norwegians who may no longer have large oil revenues. They serve as a response to expected demographic pressures, while smoothing intertemporal consumption levels for future generations when resources are exhausted. This motive becomes more important if policy makers want to limit immigration. It also presupposes that political economy problems that typically have led to 'resource curse', the appropriation of raw material rents by sitting governments, have been overcome. The rationale also assumes that the stream of natural resource revenues and what is done with it, becomes transparent at some point.

2. **Stabilization**, e.g. Chile's Economic and Social Stabilization Fund, which accumulates funds when copper prices are high and disburses them when prices are low. Capital injections by SWFs into systematically important financial institutions in late 2007 and 2008 have augmented the recipients' capital buffers and have been helpful in reducing various bank-specific risk premia, at least in the short term. This provides initial evidence that SWFs could have a potentially volatility-reducing impact on markets. They were stabilising because they came at a critical time when risk-taking capital was scarce and market sentiment was pessimistic. Many

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<sup>107</sup> John Gieve, 14 March 2008, "Sovereign wealth funds and global imbalances", pp. 3-4.

<sup>108</sup> EU.

<sup>109</sup> Commission of the European Communities, 2008, "A common European approach to Sovereign Wealth Funds", pp. 4-5.

commentators point out that as long-term investors with no imminent call on their assets, and with mainly unleveraged positions, SWFs are able to sit out longer during market downturns or even go against market trends<sup>110</sup>.

### **2.3.2 Are there any concerns?**

Notwithstanding the recognised benefits of SWF investment, some concerns have been raised by recipient countries, including in the EU. At the macroeconomic level, the rise of SWFs illustrates the seriousness of current-account imbalances in the global economy that have their origin in the managed exchange rates operated by some of the countries in surplus. The accumulation of reserves for investment by SWFs should not become an end in itself. SWF owners need to show that they are not holding back appreciation in their currencies to accumulate more foreign assets for their SWFs. A more specific concern raised by SWF investment in equities relates to the opaque way in which some SWFs' function and their possible use as an instrument to gain strategic control. This concern sets them apart from other types of investment funds. More specifically, there is unease that – whatever the original motivation – SWF investment in certain sectors could be used for ends other than for maximising return. For example, investment targets may reflect a desire to obtain technology and expertise to benefit national strategic interests, rather than being driven by normal commercial interests in expansion to new products and markets. By the same token, holdings could influence decisions by companies operating in area of strategic interest or governing distribution channels of interest to the sponsor countries<sup>111</sup>.

More generally, business and investment decisions could be influenced in the political interest of the SWFs owners. Although in most cases, SWFs are portfolio investors and have avoided taking controlling stakes or seeking a formal role in decision-making in companies, concerns have been raised about the possibility of SWFs seeking to acquire controlling stakes in companies. National security

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<sup>110</sup> Udaibir S. Das, Yinqiu Lu, Christian Mulder, and Amadou Sy, 2009, “Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations”, pp. 5, 8, 9-11.

<sup>111</sup> Commission of the European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 5.

considerations have been acknowledged by some SWFs owners, who request clarity and certainty about investments that can be made and which areas might be “off-limits” to SWFs<sup>112</sup>.

Although SWFs appear to have been a stabilizing force thus far, given their size, there are circumstances in which they could cause volatility in markets. Having large and often unclear positions in financial markets, SWFs—like other large institutional investors—have the potential to cause a market disturbance. For instance, actual or rumoured transactions may affect relative valuations in particular sectors and result in herding behaviour, adding to volatility. Such effects could be especially pronounced in shallower markets. To the extent that SWFs invest through hedge funds that rely on leverage or are subject to margin requirements, such investments may inadvertently magnify market changes. For markets to absorb flows from any major investor class without large price fluctuations, it helps if they can anticipate the broad allocation and risk-preference trends of such investor classes. Opacity about such trends can lead to inaccurate pricing and volatility. As regards the financial stability implications of SWFs, both theoretical and empirical research has been implemented<sup>113</sup>.

The real danger is that SWFs (and other forms of government-backed investment vehicles) may encourage capital account protectionism, through which countries pick and choose who can invest in what. Of course, there are always some national security limitations on what foreigners can own. But recent developments in the world suggest there may be a perception that certain foreign governments shouldn't be allowed to own what are regarded as an economy's “commanding heights”. This is a slippery slope, which leads quickly and painfully to other forms of protectionism. It's important to preempt such pressures<sup>114</sup>.

Official and private commentators have expressed concerns about the transparency of SWFs, including their size, and their investment strategies and that SWF investments may be affected by political objectives. They also raise the issue of the expanded role of governments in international markets and industries.

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<sup>112</sup>Helmut Reisen, 2008, “How to Spend It: Commodity and Non-Commodity Sovereign Wealth Funds” POLICY BRIEF No. 38, pp. 7-8.

<sup>113</sup>IMF Research Bulletin, March 2009, Volume 10, Number 1, available at <http://www.imf.org/researchbulletin>.

<sup>114</sup> Available at <http://www.imf.org/external/pubs/ft/fandd/2007/09/straight.htm>.

In addition, there are concerns about how growing SWFs fit into the domestic policy formulation of countries with SWFs, and how their investments might affect recipient countries with shallow markets. At the same time, countries with SWFs are concerned about protectionist restrictions on their investments, which could hamper the international flow of capital. Some SWFs have argued that they are vulnerable to changes in the regulatory climate, and thus have to operate cautiously as change can be costly<sup>115</sup>.

The absence of SWF data can hinder economic analysis and potentially mislead policymakers, market participants, and other commentators about a country's economic performance<sup>116</sup>. The flows and positions of SWFs should be covered in the national accounts, fiscal, monetary and financial, and external accounts. SWFs' activities could significantly affect the generation and distribution of income, consumption behaviour, and accumulation activities of the economy, and so need to be included in the national accounts. Capturing SWFs' activities in public finance statistics is also crucial, so that accurate assessments can be made of the integration of SWF operations with the overall fiscal accounts, and the fiscal risks on the public sector's balance sheet.

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<sup>115</sup> Available at <http://www.imf.org/external/np/sec/pn/2008/pn0841.htm>

<sup>116</sup> Others argue that in the financial stability context, while transparency can be a powerful tool for limiting the moral hazard of investors and governments alike, care needs to be taken over the types of information provided. For example, Gai and Shin consider that the dissemination of information must be coherent and open but that disclosures may need to be selective. For example, in the midst of a crisis revealing more information about a troubled financial institution's trading positions may exacerbate speculative attacks and add to the difficulties of the crisis manager. See Gai and Shin, "Transparency and Financial Stability," Bank of England Financial Stability Report (December 2003).

## **CHAPTER 3: Global treatment of SWFs**

The issues raised by the growth of SWFs are under consideration in a number of venues including the Working Group on Financial Markets, of which the Securities and Exchange Commission<sup>117</sup> is a member, as well as the G-7, the World Bank, the OECD and the IMF. The possible outcome of the discussions concerning the issues around SWFs, may be a generalized agreement about the kinds of strong fiduciary controls, disclosure requirements, professional and independent management, and checks and balances needed to prevent corruption, all of which may help protect both investors and markets<sup>118</sup>.

During the past year, in view of changing perceptions of national security, OECD countries and non-OECD partners have worked together on “freedom of investment and national security”. They agree that any policy responses to national security concerns should remain consistent with rights and obligations under international agreements. They, also, accord that any restrictions on investment should also be guided by the principles of proportionality, regulatory transparency and predictability, and accountability of the implementing authorities<sup>119</sup>.

### **3.1 Europe’s response**<sup>120</sup>

The European regulatory framework is evolving quickly and will see the beginning of a move to a more centralized and uniform setting of standards across European financial markets, a move that the UK government and the Financial Services Authority<sup>121</sup> have supported.

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<sup>117</sup>SEC.

<sup>118</sup>Available at <http://www.sec.gov/news/testimony/2008/ts020708lct.htm>.

<sup>119</sup> OECD Investment Newsletter, October 2007, Issue 5, “International investment of sovereign wealth funds: are new rules needed?”, pp. 4-5.

<sup>120</sup> a) Andrej Bajuk, Minister of Finance, Seventeenth Meeting April 12, 2008, International Monetary and Financial Committee, pp. 6-7, b) Available at <http://www.sec.gov/news/testimony/2008/ts020708lct.htm>, c) Available at <http://www.sec.gov/news/testimony/2008/ts030508et.htm>, d) Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 6-10, e) Available at <http://www.sec.gov/news/testimony/2008/ts042408.htm>.

<sup>121</sup> FSA.

There is not yet a clear vision of a long-term European financial regulatory framework. It will require detailed analysis and should not be rushed or unduly constrained by political expediency. Ultimately, it is considered that an independent regulatory standard setter, fully publicly accountable, subject to transparent and fair procedural constraints including sound and realistic market impact analysis, and protected from clandestine political interference is necessary if Europe is to have a credible regulatory framework that will protect consumers, underpin open and fair financial markets and ensure financial stability<sup>122</sup>.

The European Commission proposed a common EU approach for a code of conduct for SWFs<sup>123</sup>. Although discussions are ongoing, it is contemplated that SWFs would disclose such things as:

- The investment positions and asset allocations, particularly where they have majority ownership,
- The exercise of ownership rights,
- The use of leverage,
- The size and source of their resources, and
- A disclosure of their home country's regulation and oversight that governs the SWF<sup>124</sup>.

The recent new focus on improved SWF governance does not however mean that SWFs operate in a legal vacuum today. In Europe, between the EU and the Member State level, there exists a comprehensive regime to regulate the establishment and the actions of foreign investors, which covers SWFs in exactly the same way as any other foreign investor. As soon as they invest in European assets, SWFs have to comply with the same EU and national economic and social legislation that any other investors have to respect<sup>125</sup>.

The European Commission<sup>126</sup> and its Member States are bound by these obligations when considering measures on investment by SWFs as for measures pertaining to any other investment. With regard to the EU legal framework,

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<sup>122</sup> Available at [http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/0624\\_dw.shtml](http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/0624_dw.shtml).

<sup>123</sup> Available at <http://www.sec.gov/news/testimony/2008/ts042408.htm>.

<sup>124</sup> Available at <http://www.sec.gov/news/testimony/2008/ts030508et.htm>.

<sup>125</sup> Commission Of The European Communities, 2008, "A common European approach to Sovereign Wealth Funds", pp. 6-10.

<sup>126</sup> EC.

investments by SWFs in the EU are subject to the same rules and controls as any other form of investment, either foreign or domestic, where the principles of free movement of capital between Member States, and between Member States and third countries stipulated in Article 56 EC apply. The free movement of capital is not absolute. As a fundamental principle of the Treaty, it may be regulated in two respects at the European level under Article 57 EC:

- First, the Community may adopt qualified majority measures on the movement of capital from third countries involving direct investment.
- Second, it is not excluded that the Community can introduce – by a unanimous decision - measures that restrict direct investments<sup>127</sup>.

The Merger Regulation allows Member States to take appropriate measures to protect legitimate interests other than competition. Such measures must be necessary, non discriminatory and proportionate as well as compatible with other provisions of Community law. Public security, plurality of the media and prudential rules are regarded as legitimate interests, whilst other interests can be considered legitimate on a case by case basis on notification to the Commission.

Regarding national legislation, Member States have national instruments which could be used to control and condition SWF investments or any other investors and they can also develop new measures suitable to tackle specific needs if these arise, as long as those measures are compatible with the Treaty, are proportionate and non-discriminatory, and do not contradict international obligations<sup>128</sup>.

The European Court of Justice has provided further guidance on how Member States can take these national measures in full compatibility with the Treaty, stressing that purely economic grounds can never justify obstacles prohibited by the Treaty<sup>129</sup>.

The EU therefore has tools to address problems which may result from the operations of SWFs. Likewise, Member States have adequate powers under the Treaty to deal with public order and public security considerations. Furthermore, SWFs have

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<sup>127</sup> Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 6-10.

<sup>128</sup> Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 6-10.

<sup>129</sup> In addition, as required by Article 58(3) EC, the measures taken by Member States shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital, Article 56 EC.



behaved so far as reliable investors and their activities have not resulted in problems for the functioning of the internal market.

However, recent experience shows that the opacity of some SWFs risks prompting defensive reactions. Indeed, in recent months, several Member States have been under pressure to update national legislation and to explore applying exceptions to the application of the principles of free movement of capital and establishment. This pressure can only be increased by SWFs future expected growth in size and importance. There is therefore a case for enhancing the transparency, predictability and accountability of SWF operations. Clearing away unnecessary concerns makes it easier to maintain an open investment environment that allows the EU and its Member States to continue reap the benefits of SWF investments. There are three reasons that require a common EU approach to SWFs:

- First, as SWFs are a global issue, multilateral solutions offer greater advantages than individual national responses. An international approach can bring a degree of certainty, and allow SWFs to take investment decisions against the backdrop of a common approach. The initiatives now under way at the multilateral level will promote common understanding of the challenges raised by SWFs and the possible mechanisms through which these can be addressed. A common EU approach would maximise European influence in these wider discussions. The same is true of further dialogue with third countries, including those that own and/or operate SWFs.
- Second, the imperative of maintaining a well-functioning internal market based on open and non-discriminatory rules requires that a common approach is followed. An uncoordinated series of responses would fragment the internal market and damage the European economy as a whole. In an integrated single market, the advantages of individual measures can be illusory. Diversity of interpretation and approach risk creating new ways to by-pass the rules and steering investment away from Europe – a disincentive effect that could spread from SWFs to other potential investors. Such risks are real if Member States were to act alone, and in an uncoordinated way, and develop burdensome and binding mechanisms to control or condition investment.

- Finally, one of the main goals of EU trade policy is to open third country markets to EU investors, on the basis of the same principles used to govern the internal market. These efforts would be more difficult if the EU was seen as imposing barriers within the EU<sup>130</sup>.

Various suggestions have emerged in the public debate as possible avenues to step up the European response to SWFs. These have included an EU committee on foreign investments to mirror arrangements in the US, an EU-wide screening mechanism or some “golden shares” mechanism for non-EU foreign investment. All these suggestions run the risk of sending a misleading signal that the EU is stepping back from its commitment to an open investment regime. They would also be difficult to reconcile with EU law and international obligations<sup>131</sup>.

The EC expects SWFs to voluntarily commit to certain standards with regard to transparency and governance – to provide sufficient clarity to assuage public concerns. At the same time, the SWFs adherence to these standards will help guaranteeing investor countries a clear, predictable and stable investment framework in the EU and its Member States, as well as in other recipient countries. The Commission therefore proposes a common approach, which should be the EU contribution to efforts at international level to establish a framework to improve transparency, predictability and accountability of SWFs<sup>132</sup>.

The common EU approach to the treatment of SWFs as investors is based on the following principles:

- **Commitment to an open investment environment:** in line with the Lisbon Strategy for growth and jobs, the EU reaffirms its commitment to open markets for foreign capital and to an investor-friendly investment climate. Any protectionist move or any move perceived as such may inspire third countries to follow suit and trigger a negative spiral of protectionism. The EU prospers from its openness to the rest of the world – and from its investments abroad – and hence would be among the first to suffer from a trend towards

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<sup>130</sup> Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 6-10.

<sup>131</sup> Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 8-9.

<sup>132</sup> Commission Of The European Communities, 2008, “A common European approach to Sovereign Wealth Funds”, pp. 8-9.

protectionism. At the same time, the EU endeavours to open SWFs owners' countries to EU investors and secure a fair and equitable treatment for them, notably through Free Trade Agreement<sup>133</sup> negotiations.

- **Support of multilateral work:** the EU actively drives forward work carried out by international organisations, encouraging an open dialogue with SWFs owners and recognising the benefits of a global approach to a common framework for SWF investment.
- **Use of existing instruments:** the EU and the Member States already have specific instruments that enable them to formulate appropriate responses to risks or challenges raised by cross-border investments, including investments by SWFs, for reasons of public policy and public security.
- **Respect of EC Treaty obligations and international commitments:** the EU and its Member States will continue to act in a way fully compatible with the principles laid down in the Treaty establishing the EC and with international obligations of the EU.
- **Proportionality and transparency:** measures taken for public interest reasons on investment do not go beyond what is necessary to achieve the justified goal, in line with the principle of proportionality, and the legal framework should be predictable and transparent.

These basic principles define the common EU approach which is proposed as the basis for an understanding between recipient countries on the treatment of SWFs investments<sup>134</sup>.

### **3.2 OECD's response**<sup>135</sup>

OECD countries are committed to keeping their investment frontiers open to SWFs as long as these funds invest for commercial, not political ends<sup>136</sup>. OECD

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<sup>133</sup> FTA.

<sup>134</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, (2008), "A common European approach to Sovereign Wealth Funds", pp.6-9.

<sup>135</sup> Available at <http://www.oecd.org/dev/insights> and [http://www.oecd.org/searchResult/0,3400,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/searchResult/0,3400,en_2649_201185_1_1_1_1_1,00.html).

<sup>136</sup> That is the message in a letter from OECD Secretary-General Angel Gurría to G7 Finance Ministers detailing a common OECD position on policies towards sovereign wealth funds.

members have agreed to base their investment policies towards SWFs on existing investment instruments which call for fair treatment of investors. Two key instruments are the OECD Code of Liberalisation of Capital Movements, adopted in 1961, and the OECD Declaration on International Investment and Multinational Enterprises, issued in 1976 and revised in 2000<sup>137</sup>.

The OECD Guidance is based on the general investment policy principles of non-discrimination, transparency and liberalisation. It also recognises the right of governments to take actions they consider necessary to protect national security, but calls for restraint when applying security-related investment measures. It asks them to exercise these actions in conformity with fundamental principles of:

- **Non discrimination.** Foreign investors are to be treated not less favourably than domestic investors in like situations. While the OECD instruments protect directly the investment freedoms of those SWFs established in OECD member countries, they also commit members to using their best endeavours to extend the benefits of liberalisation to all members of the International Monetary Fund. Experience has shown that, in practice, OECD governments nearly always adopt liberalisation measures without discriminating against non-OECD countries' investors from non-member countries reap the same benefits of free market access as OECD residents.
- **Transparency.** Information on restrictions on foreign investment should be comprehensive and accessible to everyone. More specifically:
  - *Codification and publication.* Primary and subordinate laws should be codified and made available to the public in a convenient form<sup>138</sup>. In particular, evaluation criteria used in reviews should be made available to the public.
  - *Prior notification.* Governments should take steps to notify interested parties about plans to change investment policies.
  - *Consultation.* Governments should seek the views of interested parties when they are considering changing investment policies.

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<sup>137</sup> Available at

[http://www.oecd.org/document/9/0,3343,en\\_2649\\_201185\\_40409737\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/9/0,3343,en_2649_201185_40409737_1_1_1_1,00.html).

<sup>138</sup> E.g. in a public register; on internet.

- *Procedural fairness and predictability.* Strict time limits should be applied to review procedures for foreign investments. Commercially-sensitive information provided by the investor should be protected. Where possible, rules providing for approval of transactions if action is not taken to restrict or condition a transaction within a specified time frame should be considered.
  - *Disclosure of investment policy actions* is the first step in assuring accountability. Governments should ensure that they adequately disclose investment policy actions<sup>139</sup>, while also protecting commercially-sensitive and classified information.
- **Progressive liberalisation.** Members commit to the gradual elimination of restrictions on capital movements across their countries.
- **Standstill.** Members commit to not introducing new restrictions.
- **Unilateral liberalisation.** Members also commit to allowing all other members to benefit from the liberalisation measures they take and not to condition them on liberalisation measures taken by other countries. Avoidance of reciprocity is an important OECD policy tradition. The OECD instruments are based on the philosophy that liberalisation is beneficial to all, especially the country which undertakes the liberalisation<sup>140</sup>, <sup>141</sup>.
- **Regulatory proportionality.** Restrictions on investment, or conditions on transaction, should not be greater than needed to protect national security and they should be avoided when other existing measures are adequate and appropriate to address a national security concern.
  - *Essential security concerns are self-judging.* OECD investment instruments recognise that each country has a right to determine what is necessary to protect its national security. This determination should be made using risk assessment techniques that are rigorous and that reflect the country's circumstances, institutions and resources. The relationship between investment

<sup>139</sup> E.g. through press releases, annual reports or reports to Parliament.

<sup>140</sup> Kathryn Gordon, Senior Economist, OECD Investment Division, February 2009, SWFs: OECD Guidance To Recipient Countries, OECD High-Level Parliamentary Seminar: The Global Financial and Economic Crisis.

<sup>141</sup> Available at [http://www.oecd.org/searchResult/0,3400,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/searchResult/0,3400,en_2649_201185_1_1_1_1_1,00.html).

restrictions and the national security risks identified should be clear.

- *Narrow focus.* Investment restrictions should be narrowly focused on concerns related to national security.
  - *Appropriate expertise.* Security-related investment measures should be designed so that they benefit from adequate national security expertise as well as expertise necessary to weigh the implications of actions with respect to the benefits of open investment policies and the impact of restrictions.
  - *Tailored responses.* If used at all, restrictive investment measures should be tailored to the specific risks posed by specific investment proposals. This would include providing for policy measures, especially risk mitigation agreements that address security concerns, but fall short of blocking investments.
  - *Last resort.* Restrictive investment measures should be used, if at all, as a last resort when other policies<sup>142</sup> cannot be used to eliminate security-related concerns.
- **Accountability.** Procedures for internal government oversight, parliamentary oversight, judicial review, periodic regulatory impact assessments, and requirements that important decisions (including decisions to block an investment) should be taken at high government levels and should be considered to ensure accountability of the implementing authorities.
- *Accountability to citizens.* Authorities responsible for restrictive investment policy measures should be accountable to the citizens on whose behalf these measures are taken. Countries use a mix of political and judicial oversight mechanisms to preserve the neutrality and objectivity of the investment review process while also assuring its political accountability. Measures to enhance the accountability of implementing authorities to Parliament should be considered<sup>143</sup>.

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<sup>142</sup> E.g. sectoral licensing, competition policy, financial market regulations.

<sup>143</sup> E.g. Parliamentary committee monitoring of policy implementation and answers or reports to Parliament that also protect sensitive commercial or security-related information.

- *International accountability mechanisms.* All countries share a collective interest in maintaining international investment policies that are open, legitimate and fair. Through various international standards, governments recognise this collective interest and agree to participate in related international accountability mechanisms<sup>144</sup>. In particular, these help constrain domestic political pressures for restrictive and discriminatory policies.
- *Recourse for foreign investors.* The possibility for foreign investors to seek review of decisions to restrict foreign investments through administrative procedures or before judicial or administrative courts can enhance accountability. However, some national constitutions' allocation of authority with respect to national security may place limits on the scope of authority of the courts. Moreover, judicial and administrative procedures can be costly and time-consuming for both recipient governments and investors, it is important to have mechanisms in place to ensure the effectiveness, integrity and objectivity of decisions so that recourse to such procedures is rare. The possibility of seeking redress should not hinder the executive branch in fulfilling its responsibility to protect national security.
- *The ultimate authority for important decisions<sup>145</sup> should reside at a high political level.* Such decisions require high-level involvement because they may restrict the free expression of property rights, a critical underpinning of market economies, and because they often require co-ordination among numerous government functions. The final decision to prohibit (or block) an investment should be taken at the level of heads of state or ministers.
- *Effective public sector management.* Broader public sector management systems help ensure that the political level officials and civil servants responsible for security-related investment

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<sup>144</sup> E.g. the OECD notification and peer review obligations in relation to restrictive investment policies.

<sup>145</sup> E.g. to block foreign investments.

policies face appropriate incentives and controls for ensuring that they exercise due care in carrying out their responsibilities and are free from corruption, undue influence and conflict of interest<sup>146</sup>.

From all the above can be deduced the following principles which reflect long-standing OECD commitments that promote an open global investment environment. They are, also, consistent with OECD countries' rights and obligations under the OECD investment instruments.

- Recipient countries should not erect protectionist barriers to foreign investment.
- Recipient countries should not discriminate among investors in like circumstances. Any additional investment restrictions in recipient countries should only be considered when policies of general application to both foreign and domestic investors are inadequate to address legitimate national security concerns.
- Where such national security concerns do arise, investment safeguards by recipient countries should be:
  - Transparent and predictable,
  - Proportional to clearly-identified national security risks, and
  - Subject to accountability in their application<sup>147</sup>.

### **3.3 IMF's response**<sup>148</sup>

The IMF may be a convenient location for multilateral action on SWFs, but the real concern with SWFs is less the macroeconomic consequences of their activities than the microeconomic consequences of their being able to acquire

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<sup>146</sup> A publication of the OECD Investment Division – Secretariat of the OECD Investment Committee, 2008, *Sovereign Wealth Funds And Recipient Countries - Working Together To Maintain And Expand Freedom of Investment*, pp 4-5.

<sup>147</sup> Available at [http://www.oecd.org/searchResult/0,3400,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/searchResult/0,3400,en_2649_201185_1_1_1_1_1,00.html).

<sup>148</sup> a) Approved by Mark Allen and Jaime Caruana, February 29, 2008, *Sovereign Wealth Funds—A Work Agenda*, pp. 4, 5, 31, b) Udaibir S. Das, Yinqiu Lu, Christian Mulder, and Amadou Sy, 2009, "Setting up a Sovereign Wealth Fund: Some Policy and Operational Considerations", pp. 9-12, c) Available at <http://www.sec.gov/news/testimony/2008/ts020708lct.htm> and d) Philipp Hildebrand, 2007, "The challenge of sovereign wealth funds", pp. 2-7.



corporate control. The latter can only be addressed in the context of rules on cross-border flows of direct investment<sup>149</sup>.

Most Executive IMF Directors acknowledged that the elaboration of a set of best practices for SWFs will be challenging. Best practices would be expected to focus on governance, institutional and risk management arrangements, investment policies, and transparency. Of particular importance would be to safeguard the operational independence of SWFs, although it was recognized that any guidance should acknowledge the responsibility of the owners of SWFs in making decisions on investment risks and investment principles at the strategic level.

Directors supported an inclusive, collaborative approach with SWFs, which would involve relevant members and stakeholders, including recipient countries of SWF investments. They agreed that best practices would be adopted on a voluntary basis, which they saw as key to creating and ensuring broad ownership by SWFs. They considered that an important part of the work will be to decide what types of transparency are desirable, with a proper balance to be found between the market sensitivity of data and the minimum required to reflect SWFs' stated objectives<sup>150</sup>.

Formulating best practices would need to be a collaborative process, involving the SWFs themselves. The process could be modeled after that of the drafting of the IMF guidelines for Foreign Exchange Reserve Management. An already agreed first step in this process will be to survey the SWFs, with respect to their practices in relevant areas:

- (i) Their legal and regulatory framework;
- (ii) Roles, responsibilities, and objectives;
- (iii) Funding and withdrawal rules, fiscal treatment, and non investment functions;
- (iv) Governance structure;
- (v) Accountability;
- (vi) Investment policy;
- (vii) Risk management practices;
- (viii) Inclusion of SWFs in existing economic statistics; and

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<sup>149</sup> Available at <http://www.imf.org/external/pubs/ft/survey/so/2008/POL03408A.htm>.

<sup>150</sup> IMF Executive Board Discusses a Work Agenda on Sovereign Wealth Funds, April 1, 2008, Public Information Notice (PIN) No. 08/41.

(ix) Public information services adopted by the SWFs<sup>151, 152</sup>.

The Survey will provide a basis for assessing the range of current structures and practices of SWFs. Subsequently, staff will work with members to develop best practices, building on the practices currently used by SWFs, and the existing Fund guidelines that have already gained wide acceptance<sup>153</sup>.

In 2007 the IMF set out an International Working Group of SWFs<sup>154, 155</sup> to elaborate a set of SWF principles properly reflecting their investment practices and objectives, there is no south peer review or peer learning driven institution<sup>156</sup>. The IWG recognizes that SWF investments are both beneficial and critical to international markets. For that purpose, it will be important to continue to demonstrate—to home and recipient countries, and the international financial markets—that the SWF arrangements are properly set up and investments are made on an economic and financial basis.

The Generally Accepted Principles and Practices<sup>157</sup> or Santiago Principles, is a voluntary set of principles and practices that the members of the IWG support and either have implemented or aspire to implement. The GAPP denotes general practices and principles, which are potentially achievable by countries at all levels of economic development. The GAPP is subject to provisions of intergovernmental agreements, legal and regulatory requirements. Thus, the implementation of each principle is subject to applicable home country laws.

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<sup>151</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, Sovereign Wealth Funds—A Work Agenda, pp. 26.

<sup>152</sup> This work is under way.

<sup>153</sup> Prepared by the Monetary and Capital Markets and Policy Development and Review Departments in collaboration with other departments Approved by Mark Allen and Jaime Caruana, February 29, 2008, Sovereign Wealth Funds—A Work Agenda, pp 22-24.

<sup>154</sup> IWG.

<sup>155</sup> IWG Member Countries: Australia, Azerbaijan, Bahrain, Botswana, Canada, Chile, China, Equatorial Guinea, Iran, Ireland, South Korea, Kuwait, Libya, Mexico, New Zealand, Norway, Qatar, Russia, Singapore, Timor-Leste, Trinidad and Tobago, United Arab Emirates, United States IWG Permanent Observers: Oman, Saudi Arabia, Vietnam, Organization for Economic Cooperation and Development, World Bank.

<sup>156</sup> The OECD Development Centre created in 2006 a similar informal, closed and restricted platform of dialogue between OECD and emerging multinationals, the Emerging Markets Network<sup>156</sup>. A companion of this platform of dialogue could be replicated for sovereign wealth funds, from both OECD and emerging countries, including also other emerging and developing countries that have commodity endowments or wealth management issues. This Sovereign Wealth Network<sup>156</sup> would be a unique platform for peer review and peer-learning for and largely by developing and emerging countries.

<sup>157</sup> GAPP.

The principles and practices laid out in the GAPP, along with their explanatory notes, can be expected to guide existing and future SWFs in various aspects of their activities— most importantly investing professionally in accordance with their investment policy objectives—and to help inform any associated legal and institutional reform. As investment institutions, SWFs operate on a good faith basis, and invest on the basis of economic and financial risk and return-related considerations. In doing so, they comply with applicable regulatory and disclosure requirements in their home countries and in the countries in which they invest.

The GAPP, therefore, are underpinned by the following guiding objectives for SWFs:

(i) To help maintain a stable global financial system and free flow of capital and investment;

(ii) To comply with all applicable regulatory and disclosure requirements in the countries in which they invest;

(iii) To invest on the basis of economic and financial risk and return-related considerations; and

(iv) To have in place a transparent and sound governance structure that provides for adequate operational controls, risk management, and accountability<sup>158</sup>.

The IWG recognizes the evolving nature of international capital flows, and the fact that some SWFs are still in the process of establishing their operations. Other forms of sovereign investment arrangements may still emerge. Therefore, especially for newer SWFs, the implementation of the GAPP may be challenging and require an appropriate transitional period. For example, under GAPP, it is recognized that some newly established SWFs may require time to reach their desired long-term asset allocation and related performance standards and to be able to disclose the relevant information indicated in this principle. For these SWFs, there are different time frames in which this can be completed, reflecting the different investment objectives, strategies, and time horizons implied by the strategic asset allocation. For others,

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<sup>158</sup> Communiqué of the International Monetary and Financial Committee of the Board of Governors of the International Monetary Fund, October 11, 2008 ,Press Release No. 08/240.

which may already be following well established practices, the GAPP may be considered as setting a minimum standard<sup>159</sup>.

However, the GAPP is formulated broadly enough so that underlying principles and practices can be accommodated in different institutional, constitutional, and legal settings existing in various countries. The IWG also recognizes that several aspects of the GAPP could benefit from further study and work, such as those relating to the provision of comprehensive and reliable information about past, present, and future activities of an SWF, and potential risks to investment operations and SWF balance sheets. Likewise, as the macroeconomic and financial stability implications of SWF investments change and SWF practices develop, some aspects of the GAPP may need re-examination. Continuing coordination and consultation at the international level also could be desirable on issues of common interest to the SWFs. To facilitate this, the IWG has agreed to explore the establishment of a standing group of SWFs. This group would be able to keep the GAPP under review, as appropriate, and facilitate its dissemination, proper understanding, and implementation. The standing group also would provide SWFs with a continuing forum for exchanging ideas and views among themselves and with recipient countries, and also examine ways through which aggregated information on SWF operations could be periodically collected, made available, and explained<sup>160</sup>.

### **3.3.1 What does the GAPP include?**

The GAPP covers practices and principles in three key areas. These include:

- (i) Legal framework, objectives, and coordination with macroeconomic policies;
- (ii) Institutional framework and governance structure; and
- (iii) Investment and risk management framework.

Sound practices and principles in the first area underpin a robust institutional framework and governance structure of the SWF, and facilitate formulation of appropriate investment strategies consistent with the SWF's stated policy objectives.


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<sup>159</sup> IWG, 2008, Sovereign Wealth Funds Generally Accepted Principles and Practices "Santiago Principles", pp. 5-6.

<sup>160</sup> IWG, 2008, Sovereign Wealth Funds Generally Accepted Principles and Practices "Santiago Principles", pp. 5-6.

A sound governance structure that separates the functions of the owner, governing body(ies), and management facilitates operational independence in the management of the SWF to pursue investment decisions and investment operations free of political influence. A clear investment policy shows an SWF's commitment to a disciplined investment plan and practices<sup>161</sup>.

### **3.3.1.1 Legal Framework, Objectives and Coordination with Macroeconomic Policies Legal basis and form**

 *GAPP 1. Principle:* The legal framework for the SWF should be sound and support its effective operation and the achievement of its stated objective(s)<sup>162</sup>. A sound legal framework underpins a robust institutional and governance structure of the SWF and a clear delineation of responsibilities between the SWF and other governmental entities. This framework facilitates the formulation and implementation of appropriate objectives and investment policies, and is necessary for an SWF to operate effectively to achieve its stated purpose.

The legal framework of an SWF generally follows one of three approaches. The first type of SWFs is established as a separate legal identity with full capacity to act and governed by a specific constitutive law<sup>163</sup>. Such SWFs are legal identities under public law. The second category of SWFs takes the form of a state-owned corporation<sup>164,165</sup> or China's Investment Corporation<sup>166</sup>. Although these corporations typically are governed by general company law, other SWF-specific laws may also apply. The third category of SWFs is constituted by a pool of assets without a separate legal identity. The pool of assets is owned by the state or the central bank<sup>167</sup>. In these cases, legislation typically sets out specific rules governing the asset pool. Provided

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<sup>161</sup> International Working Group Of Sovereign Wealth Funds , October 2008, Sovereign Wealth Funds General Accepted Principles and Practices, "Santiago Principles", pp 11-25.

<sup>162</sup> See also GAPPs 6 and 16.

<sup>163</sup> E.g., Kuwait, Korea, Qatar, and United Arab Emirates (Abu Dhabi Investment Authority, ADIA).

<sup>164</sup> E.g., Singapore's Temasek and Government of Singapore Investment Corporation (GIC).

<sup>165</sup> GIC is a corporation that is wholly owned by the government of Singapore and manages Singapore's foreign reserves. The government is the owner of the reserves. However, Temasek—which also is wholly owned by the Government as its sole shareholder—is the legal owner of its assets.

<sup>166</sup> CIC.

<sup>167</sup> E.g., Botswana, Canada (Alberta), Chile, and Norway.

that the overall legal framework is sound, each of these structures can be employed to meet the requirements laid down in this Principle.

➤ *GAPP 1.1. Subprinciple:* The legal framework for the SWF should ensure legal soundness of the SWF and its transactions. This general principle has several implications. First, the establishment of the SWF should be clearly authorized under domestic law. Second, the legal structure should include a clear mandate for the manager to invest the SWF's assets and conduct all related transactions. Third, irrespective of the particular legal structure of an SWF, the beneficial and legal owners of the SWF's assets should be legally clear. Such clarity contributes to accountability in the home country, and is often required under the recipient countries' regulations.

➤ *GAPP 1.2. Subprinciple:* The key features of the SWF's legal basis and structure, as well as the legal relationship between the SWF and other state bodies, should be publicly disclosed. Disclosure of the legal basis and structure of the SWF enhances the public understanding and confidence in the mandate to manage public monies.

Clarity and disclosure of the legal relationship between the SWF and other state bodies such as the central bank, development banks, other state-owned corporations and enterprises contributes to a better understanding of the mandated responsibilities of the SWF vis-à-vis other government bodies, and of the SWF's institutional set-up and organization structures to ensure that it is managed professionally. There are several ways in which the legal basis and structure of SWFs are disclosed. For SWFs that do not have a legal identity, their legal basis and structure is typically described in the provisions of publicly available legislation<sup>168</sup>. The legal structure of SWFs that have a legal identity with capacity to act under public law is disclosed through the generally available constitutive laws of the SWF. Lastly, SWFs that are constituted as state-owned companies are normally governed by the country's company law (as well as other laws regulating private and public

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<sup>168</sup> For example, the SWF in Botswana was created by a provision in the Bank of Botswana Act; the Alberta Heritage Fund was established by the Alberta Heritage Savings Trust Fund Act; and the Norwegian Government Pension Fund was established by Government Pension Fund Law.

companies)<sup>169</sup>. In addition, some SWFs disclose key features of their corporate structure on their websites<sup>170</sup>.

### **3.3.1.2 Objectives and macroeconomic linkages**

*GAPP 2. Principle:* The policy purpose of the SWF should be clearly defined and publicly disclosed. A clearly defined policy purpose facilitates formulation of appropriate investment strategies based on economic and financial objectives<sup>171</sup>. The pursuit of any other types of objectives should be narrowly defined and mandated explicitly. A clearly defined policy purpose will also ensure that the operational management of the SWF will conduct itself professionally and ensure that the SWF undertakes investments without any intention or obligation to fulfill, directly or indirectly, any geopolitical agenda of the government.

Public disclosure of the SWF's policy purpose provides a better understanding of what the SWF seeks to achieve and whether its behaviour is consistent with the specified purpose. SWFs are created by governments for a variety of policy purposes such as:

(i) Stabilization funds<sup>172</sup>, where the primary objective is to insulate the budget and the economy against commodity price swings;

(ii) Savings funds for future generations<sup>173</sup>, which aim to convert non-renewable assets into a more diversified portfolio of assets to meet public sector superannuation liabilities in the future and mitigate the possible Dutch disease<sup>174</sup> effects of spending resource revenue; and

(iii) Reserve investment corporations<sup>175</sup>, whose assets or assets under management, to some extent, are still counted as reserve assets<sup>176</sup>, and are established

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<sup>169</sup> These laws could require disclosure of key information on the SWF's structure in a corporate registry that may be open to the public.

<sup>170</sup> E.g., Australia, Canada (Alberta), Korea, Kuwait, New Zealand, and Singapore.

<sup>171</sup> See also GAPP 19.

<sup>172</sup> E.g., Russia, Chile, and Mexico.

<sup>173</sup> E.g., Libya and Kuwait.

<sup>174</sup> Dutch disease refers to the situation where a boom in a commodity sector of the economy could lead to a loss of competitiveness for other sectors in this economy.


<sup>175</sup> E.g., Korea and Singapore's GIC.

<sup>176</sup> Reserve assets consist of those external assets that are readily available to and controlled by monetary authorities for direct financing of payments imbalances, for indirectly regulating the magnitude of such imbalances through intervention in exchange markets to affect the currency




to increase the return on reserves. These purposes or objectives may be multiple, overlapping, or changing over time<sup>177</sup>.

The SWF's policy purpose guides its investment policy and asset management strategy. For instance, stabilization funds, which serve short-to medium-term objectives, usually have shorter investment horizons. By contrast, savings funds, which have longer-term objectives, typically aim at generating higher returns over a long time horizon. SWFs whose objective is to hedge against country-specific risks may hold assets with negative correlation to the country's major exports to offset terms-of-trade shocks. Many SWFs only invest abroad, thus illustrating how the SWF's purpose can affect its investment policy.

 ***GAPP 3. Principle:*** Where the SWF's activities have significant direct domestic macroeconomic implications, those activities should be closely coordinated with the domestic fiscal and monetary authorities, so as to ensure consistency with the overall macroeconomic policies.

Since SWFs are often created for macroeconomic purposes, their operations should support and be consistent with a sound overall macroeconomic policy framework. The SWF's operations can have a significant impact on public finances, monetary conditions, the balance of payments, and the overall sovereign balance sheet. Thus, operations of the SWF that have significant macroeconomic implications should be executed in coordination and consultation with the competent domestic authorities. For instance, transactions that involve an exchange between domestic and foreign currencies by an SWF may affect monetary conditions, the exchange rate, and domestic demand conditions.

### **3.3.1.3 Funding and withdrawal rules**

 ***GAPP 4. Principle:*** There should be clear and publicly disclosed policies, rules, procedures, or arrangements in relation to the SWF's general approach to

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exchange rate, and/or for other purposes (see IMF, 1993 Balance of Payments Manual, page 97). Underlying the concept of reserve assets are the notions of "control," and "availability for use," by the monetary authorities.

<sup>177</sup> For example, in some countries (e.g., Botswana and Russia) stabilization funds have evolved into funds with a savings objective, as accumulated reserves increasingly have exceeded the amounts needed for short-term fiscal stabilization.



funding, withdrawal, and spending operations on behalf of the government. Policies, rules, procedures, or arrangements for the SWF's funding, withdrawal, and spending operations on behalf of the government should be clearly set out and be consistent with the policy purpose of the SWF. This could be in the relevant legislation, charter, or other constitutive documents. Such a system helps provide a clear basis for deriving the expected time horizon and efficient investment policy for the savings, and promotes macroeconomic stability and accountability.

Funding and withdrawal rules are specific to the type of SWF. Fiscal stabilization funds are typically funded from revenue contingent deposit rules<sup>178</sup>, and their withdrawal rules are crafted to finance specific budget deficits or are set in motion by triggers such as a fall in a commodity price below a specified level<sup>179</sup>. Savings funds are typically funded by government budget surpluses, while the budget's expenditure path takes into account the long-term expected returns from the SWF.<sup>180</sup> Some SWFs keep their capital and returns, while others pay out targeted annual dividends.

➤ *GAPP 4.1. Subprinciple:* The source of SWF funding should be publicly disclosed. Public disclosure of the source of an SWF's funding facilitates a better understanding of the uses of public monies, thereby promoting accountability. Many SWFs are funded out of mineral royalties, principally oil, while the remainder are funded from privatization receipts, general fiscal surpluses, and balance of payments surpluses and foreign exchange intervention.

Returns on SWF investments also contribute to the build up of assets under management. In a few cases, divestment proceeds and borrowing from markets have also played a role in asset accumulation. The extent to which the SWF's assets are also classified as international reserves should be clarified.

➤ *GAPP 4.2. Subprinciple:* The general approach to withdrawals from the SWF and spending on behalf of the government should be publicly disclosed. SWFs should aim at generating returns based on economic and financial considerations and, in general,

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<sup>178</sup> E.g., exceeding a revenue or commodity price reference level.

<sup>179</sup> In Kuwait, a predetermined part of oil revenues is deposited in the SWF. In Chile, accumulation (and withdrawal) is based on a reference copper price determined annually by the authorities.

<sup>180</sup> For example, Norway's SWF receives the net central government receipts from petroleum activities and transfers to the budget the amounts needed to finance the non-oil deficit. Therefore, the net allocation to the SWF reflects the budget's overall balance.

engage directly in spending only for their own operating expenses. Instead of undertaking general government expenditure, withdrawals may be made from the SWF to the national budget, from which expenditure is made according to national priorities or specific earmarks. Making withdrawals within the budget framework will ensure consistency with macroeconomic policies, and the same applies to SWF spending on general government tasks<sup>181</sup>. The nation's budget documentation should also explain the contribution made by the SWF to the government's fiscal and monetary objectives<sup>182</sup>.

#### **3.3.1.4 Statistics compilation and reporting**

 ***GAPP 5. Principle:*** The relevant statistical data pertaining to the SWF should be reported on a timely basis to the owner, or as otherwise required, for inclusion where appropriate in macroeconomic data sets. Policymakers in general rely on macroeconomic data sets that are accurately compiled and disseminated by the national agencies such as the national statistical office, and the statistics departments in the central bank and ministry of finance.


The absence of economic data in national macroeconomic data sets of national accounts and fiscal, monetary, and external sector statistics can hinder economic analysis and potentially mislead data users. The importance of SWFs underlines the need for their activities to be captured in relevant macroeconomic data sets. Cooperation in data reporting primarily involves the owner, or—depending on national arrangement—the SWF, transmitting timely SWF data of good quality and relevant scope to the appropriate national agencies, using modalities of data transmission agreed with those national agencies. The data should be treated with customary confidentiality by the national agencies as set out in the statistical law/regulation(s). Adding a description of key features of the statistics supplied facilitates their correct interpretation.

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<sup>181</sup> In Russia, withdrawals are approved by the federal budget laws.

<sup>182</sup> Some SWFs (e.g., in Libya) may be set up to directly finance domestic infrastructure investments or other public goods or services.

### **3.3.1.5 Institutional Framework and Governance Structure Governance framework**

 *GAPP 6. Principle:* The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the SWF to pursue its objectives<sup>183</sup>. Regardless of the specific governance framework, the SWF's operational management should be conducted on an independent basis to ensure its investment decisions and operations and based on economic and financial considerations consistent with its investment policy and objectives, in effect free of political influence or interference.

The governance structure should be set out in the SWF's legal framework, for example, in the relevant legislation, charter or other constitutive documents. It should ensure appropriate and effective division of oversight, decision making, and operational responsibilities<sup>184</sup>. A number of SWFs, which are established as separate legal entities<sup>185</sup>, have a governance structure that clearly differentiates an owner, a governing body<sup>186</sup>, and management of the SWF. Where SWFs are established as pools of assets without separate legal personality<sup>187</sup>, the owner may exercise the functions of the governing body(ies) through one or more of its organizational units<sup>188</sup>. In such cases it is important that there be a clear distinction between the owner/governing body(ies) and the agency responsible for the operational management of the SWF. For example, the operational management of the SWF could be delegated to an independent entity, such as the central bank<sup>189</sup> or a separate statutory agency<sup>190</sup>.

 *GAPP 7. Principle:* The owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined

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<sup>183</sup> See also GAPPs 1, 10, 16, and 19.

<sup>184</sup> Relevant guidance includes the OECD Principles of Corporate Governance.

<sup>185</sup> E.g., Qatar, UAE (ADIA), Australia, and Singapore's Temasek and GIC.

<sup>186</sup> See GAPP 8 for a definition of the governing body.

<sup>187</sup> E.g., Chile, Canada (Alberta), Mexico, Norway, Russia, Timor-Leste, and Trinidad and Tobago.


<sup>188</sup> E.g., a ministry, a parliamentary committee, etc.

<sup>189</sup> E.g., Chile, Norway, Timor-Leste, and Trinidad and Tobago.

<sup>190</sup> E.g., Canada (Alberta).

procedures, and exercise oversight over the SWF's operations. The owner<sup>191</sup> has two important roles. First, the owner determines the SWF's objectives. These include the broad policy purposes of the SWF and the investment mandate and acceptable levels of risk consistent with it. In some cases, the role of the owner is to determine objectives consistent with relevant statutory provisions; in other cases, these matters are determined by the owner without detailed legislative guidance or constraints.

Second, the owner exercises its oversight responsibility in accordance with the legal structure of the SWF. For that purpose, there should be adequate reporting systems in place that give the owner a true picture of the SWF's performance, financial situation, and risk management practices in order to allow the owner to effectively oversee the SWF's performance<sup>192</sup>. In addition to these two roles, particularly in cases where the SWF is a separate legal entity, the owner generally appoints the members of the SWF's governing body(ies), the procedures and competency requirements for which should be well-structured and transparent.

 **GAPP 8. Principle:** The governing body(ies) should act in the best interests of the SWF, and have a clear mandate and adequate authority and competency to carry out its functions. The governing body(ies) of the SWF sets the strategy and policies aimed at achieving the SWF's objectives and is ultimately responsible for the SWF's performance. In addition, its mandate may also include:

- (i) Deciding how to implement such strategies;
- (ii) Delegating responsibilities and setting up committees as deemed necessary;<sup>193</sup>
- and (iii) Especially where the SWF is a separate legal entity, appointing and removing the SWF management including the CEO and/or the managers.

The governing body(ies) can take the form of a board of directors or trustees<sup>194</sup>, or a committee or commission<sup>195</sup>. In some cases, such as where the SWF is a pool of assets, the governing body(ies) may be, for example, the ministry of finance<sup>196</sup> and/or be represented by the governing body(ies) of the central bank<sup>197</sup>.

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<sup>191</sup> The owner refers to the government as the beneficial and/or the legal owner of the SWF, or assets managed by the SWF, depending on the legal structure of the SWF (see GAPP 1).

<sup>192</sup> See also GAPP 23

<sup>193</sup> For example, these could include an Audit Committee and an Investment Committee.


<sup>194</sup> E.g., Australia, China, Singapore's Temasek and GIC, UAE (ADIA), and Trinidad and Tobago.

<sup>195</sup> E.g., Ireland and Korea.

<sup>196</sup> E.g., Canada (Alberta), Norway, Mexico, Russia, and Timor-Leste.

<sup>197</sup> E.g., Botswana.

The governing body(ies) should be structured so that it is able to exercise effective, independent, and objective judgment in respect of its responsibilities. It is important to establish a clear policy of a minimum standard of competency for governing body members—and members of the governing body committees, as the case may be—for them to perform their functions. A remuneration scheme that attracts and maintains qualified professionals fosters the established objectives of the SWF. As applicable, the governing body's roles and responsibilities, as well as the number of its members and their appointment, terms of office, and procedures for removal, should be clearly specified in the relevant legislation, charter, or other constitutive documents. Furthermore, the governing body's roles and responsibilities should be made publicly available.

 ***GAPP 9. Principle:*** The operational management of the SWF should implement the SWF's strategies in an independent manner and in accordance with clearly defined responsibilities. The management of the SWF responsible for its day-to-day operations should have the authority to make individual investment decisions, as well as to make operational decisions relating to staffing and financial management subject to strategic direction from and accountability to the owner or the governing body(ies). The operational management of the SWF should act in the best interest of the SWF, and its responsibilities should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreements.

To enhance confidence in recipient countries, it is important that managers' individual investment decisions to implement the SWF's defined strategy be protected from undue and direct political interference and influence. As owner, the role of the government is to determine the broad policy objectives of the SWF, but not to intervene in decisions relating to particular investments. A range of mechanisms could be employed to ensure the operational independence of the SWF's management:

(i) Vesting responsibility for the SWF's management in a separate entity headed by a governing body with clearly defined responsibility for implementing the broad investment mandate established by the government;


(ii) Providing extensive powers to the chief executive and senior managers where the SWF's governing body(ies) is not independent;




(iii) Vesting responsibility for operational management in the hands of the central bank or statutory agency; or

(iv) Contracting out responsibility for making individual investment decisions to external service providers on a fee-for-service basis. One or more of the above mechanisms could be adopted, or the owner or the governing body(ies) should demonstrate that the operational independence of the SWF's management is preserved.

### **3.3.1.6 Accountability**

 ***GAPP 10. Principle:*** The accountability framework for the SWF's operations should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreement. It is important that there are in place accountability arrangements for the owner, the governing body(ies), and the operational management, as applicable, which are commensurate with their respective defined responsibilities. The owner is accountable, for example, to the legislature<sup>198</sup> or the public, for the SWF's approved objectives. In cases of SWFs established as separate legal entities, the governing body(ies) is accountable to the owner, and management is accountable to the governing body(ies) for the SWF's operations, including its investment performance.

In cases of SWFs without separate legal identity, the entity responsible for operational management is accountable to the owner. Access to accurate, timely, and relevant information is essential to an effective accountability framework. In addition, developing appropriate evaluation methods could facilitate the monitoring by owners and governing body(ies), or both as the case may be, of the performance of SWF managers in achieving their objectives<sup>199</sup>.


 ***GAPP 11. Principle:*** An annual report and accompanying financial statements on the SWF's operations and performance should be prepared in a timely fashion and in accordance with recognized international or national accounting standards in a consistent manner. The annual report and the financial statements should present the

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<sup>198</sup> As is the case in Botswana, Canada (Alberta), Chile, Mexico, Norway, Russia, Timor-Leste, and Trinidad and Tobago.

<sup>199</sup> See also GAPP 23.

performance of the SWF's assets and liabilities and be based on a reliable and consistent accounting system. This is important to ensure that information about investments and performance is clear, fair, accurate, and comparable for accountability reasons. It is also important that the financial statements include information on contingent liabilities and off balance sheet transactions, as applicable. In most cases, the financial statements are prepared according to international financial reporting standards<sup>200</sup> or equivalent national accounting standards<sup>201, 202</sup>.

 ***GAPP 12. Principle:*** The SWF's operations and financial statements should be audited annually in accordance with recognized international or national auditing standards in a consistent manner. The SWF's activities, finances, accounting and operational systems, and controls should be internally audited on a regular basis, as applicable. The audit procedures should be open for review. The internal audit process should be independent of the SWF's operational management and result in periodic internal audit reports, which could be presented to the owner or the governing body(ies) or a committee thereof.

The SWF's financial statements should be subject to an annual independent external audit in line with international standards, or equivalent national auditing standards, so as to provide assurance that the financial statements fairly represent the financial position and performance of the SWF in all material respects. Information on accounting policies and any qualification to the statements should be an integral part of the financial statements. The external audit report prepared by an independent commercial auditor should be submitted to the owner or the governing body(ies) or a committee thereof. In some instances, an external audit report may also be prepared by an independent statutory auditor. The external auditor should be subject to strict qualification and suitability standards, and the selection process for commercial auditor should be transparent, independent, and free from political interference<sup>203, 204</sup>.

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<sup>200</sup> E.g., Azerbaijan, Botswana, Timor-Leste, Trinidad and Tobago, and UAE (ADIA).


<sup>201</sup> E.g., Australia, China, Korea, New Zealand, and Singapore.

<sup>202</sup> See [www.IFRS.com](http://www.IFRS.com).


<sup>203</sup> For example, consistent with the International Federation of Accountants Code of Ethics.


<sup>204</sup> See IFAC, 2005, Code of Ethics for Professional Accountants.

### **3.3.1.7 Assurances of integrity of operations**

 *GAPP 13. Principle:* Professional and ethical standards should be clearly defined and made known to the members of the SWF's governing body(ies), management, and staff. To ensure the soundness and integrity of the SWF's operations, members of the governing body(ies), managers, and staff should be appropriately qualified and well-trained, and should be subject to minimum professional standards. To the extent applicable, the governing body(ies) should require establishment of a code of conduct for all members of the governing body(ies), management, and staff, including compliance programs.

Furthermore, members of the governing body(ies), managers, and staff should be subject to conflicts of interest guidelines, and rules. These codes, guidelines, and rules are critical in ensuring a high level of integrity and professionalism. In addition, adequate legal protection for members of the governing body(ies), management, and staff such as customary provision of indemnification and insurance where applicable, furthers the good-faith conduct of their official duties. In cases where the SWF is a pool of assets, professional and ethical standards should apply to staff employed by the entity(ies) involved in the operational management of the SWF.

 *GAPP 14. Principle:* Dealing with third parties for the purpose of the SWF's operational management should be based on economic and financial grounds, and follow clear rules and procedures. To ensure good governance and efficient use of resources, it is important that the SWF, its owners, or the entities in charge of the SWF's operational management establish clear rules and procedures for dealing with third parties<sup>205</sup>.

 *GAPP 15. Principle:* SWF operations and activities in host countries should be conducted in compliance with all applicable regulatory and disclosure requirements of the countries in which they operate. It is essential that the SWF respect host country rules and comply with all applicable laws and regulations of host countries in which SWF operations are conducted. Information with respect to the SWF's operations or activities within a given jurisdiction should be disclosed to the relevant regulators in such jurisdictions in compliance with applicable laws and regulations, including in

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<sup>205</sup> E.g., commercial fund managers and custodians, or external service providers





connection with investigations or any other regulatory actions initiated by securities regulators or other relevant authorities.

In particular, the SWF should:

- (i) Abide by any national securities laws, including disclosure requirements and market integrity rules addressing insider trading and market manipulation;
- (ii) Provide disclosure to local regulators, upon request and in confidence, of financial and non-financial information as required by applicable laws and regulation;
- (iii) Where required by applicable law or regulation, be subject to local regulators, and cooperate with investigations and comply with regulatory actions initiated by local regulators or other relevant authorities;
- (iv) Abide by any anti-monopoly rules; and
- (v) Comply with all applicable tax rules.

The SWF expects that host countries would not subject the SWF to any requirement, obligation, restriction, or regulatory action exceeding that to which other investors in similar circumstances may be subject.

 ***GAPP 16. Principle:*** The governance framework and objectives, as well as the manner in which the SWF's management is operationally independent from the owner, should be publicly disclosed. Public disclosure of the objectives and governance framework of the SWF promotes a clear understanding of what the SWF seeks to achieve and of the division of responsibilities to provide assurance that investment decisions are made on an independent basis without political interference. Such public disclosure would support the maintenance of an open and stable investment climate. In particular, it can assist in reassuring recipient countries that SWF investments are based on economic and financial considerations and employ sound operational controls and risk management systems<sup>206</sup>.


 ***GAPP 17. Principle:*** Relevant financial information regarding the SWF should be publicly disclosed to demonstrate its economic and financial orientation, so as to contribute to stability in international financial markets and enhance trust in recipient countries. The financial information referred to in this principle would normally be

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<sup>206</sup> For example, in Australia and Ireland, the SWFs disclose this information in annual reports, media releases, and on their websites. In Azerbaijan, the SWF responds to freedom of information requests and publishes information on its website, while SWFs in UAE (ADIA) and Singapore publish their objectives and governance structure on their websites.

asset allocation, benchmarks where relevant, and rates of return over appropriate historical periods consistent with investment horizons. Disclosure of these items will help to give guidance on risk appetite. These disclosures taken together with the disclosure of other items specified in the GAPP, particularly GAPPs 2, 4, 18.3, and 21, aim at meeting the intent of the GAPP to contribute to stability in international financial markets and enhance trust in recipient countries.

### **3.3.1.8 Investment and Risk Management Framework Investment policy**

 ***GAPP 18. Principle:*** The SWF's investment policy should be clear and consistent with its defined objectives, risk tolerance, and investment strategy, as set by the owner or the governing body(ies), and be based on sound portfolio management principles. The investment policy should set out how to achieve the SWF's defined objectives using the investment strategy as set by its owner or its governing body(ies). By defining the investment policy, the SWF commits to a disciplined investment plan. The investment policy also guides the SWF in implementing activities consistent with the approved investment objectives and strategies, and risk tolerance<sup>207</sup>, as well as its investment monitoring procedures.

Although there is no set formula that suits all situations, the investment policy, including the strategic asset allocation, should draw upon appropriate portfolio management principles. The strategic asset allocation is typically embodied in a benchmark portfolio<sup>208</sup>, and determined by the SWF's policy purpose, liability profile, horizon over which expected returns and risk are defined, and characteristics of different asset classes<sup>209</sup>. The investment policy normally defines permissible asset classes and gives guidance on concentration risk with regard to individual holdings, liquidity, and geographical and sectoral concentration. In line with the policy purpose of the SWF, the strategic asset allocation may set certain investment parameters, for example, exclusively investing in foreign assets.

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<sup>207</sup> Risk tolerance refers to an investor's willingness and ability to handle declines in the value of his/her portfolio. For example, it can be expressed as the degree of uncertainty that an investor can accept with regard to a negative change in the value of the portfolio.

<sup>208</sup> A benchmark portfolio is a reference portfolio or an index constructed on the basis of the investment policy. It serves as a basis for comparison of the performance of the actual portfolio.

<sup>209</sup> Asset class refers to a group of securities that exhibit similar characteristics, and behave similarly in the financial market. Examples of asset classes include stocks, bonds, and real estate.

In addition, the strategic asset allocation may consider the SWF's investments in conjunction with other assets or liabilities of the country, resulting in, for example, investing in assets negatively correlated with the country's natural resources. As the parameters and assumptions underlying the SWF's investment policy— including its strategic asset allocation—change over time, a periodic review is needed<sup>210</sup>.

➤ *GAPP 18.1. Subprinciple:* The investment policy should guide the SWF's financial risk exposures and the possible use of leverage. Exposures to financial risks including market, credit, and liquidity risks, the use of derivatives, and leverage<sup>211</sup> commensurate with the SWF's investment horizon and risk bearing capacity are key determinants of its ability to meet its investment objectives and contribute to financial market stability. Such exposures and the use of derivatives and leverage should be well understood, and measured and managed appropriately<sup>212</sup>.

Derivatives are useful in SWFs' operations— some may use them only for hedging purposes, whereas others also use them for active position taking. While SWFs typically do not use much leverage, this is often an integral part of an SWF's investment, risk management, and cash management frameworks. It may show up in a variety of forms, including traditional borrowing to finance investments, use of futures and options contracts, interest rate and currency swaps, repos, and buy/sell-back operations. In addition, leverage is an integral part of investing in certain asset classes such as “alternative investments” and real estate including from a rate of return and from a tax perspective, where appropriate.

➤ *GAPP 18.2. Subprinciple:* The investment policy should address the extent to which internal and/or external investment managers are used, the range of their activities and authority, and the process by which they are selected and their performance monitored. In addition to internal managers, SWFs may allocate part of their assets to one or more external institutions for investment management. An SWF may use external managers because they may:

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<sup>210</sup> E.g., as is currently done by SWFs in Australia, New Zealand, and Singapore.

<sup>211</sup> Leverage is using borrowed funds or debt in such a way that the potential positive or negative outcome is magnified and/or enhanced.

<sup>212</sup> See GAPP 22.

(i) Have skills and established systems for undertaking investment activities in specialized instruments and markets for which the SWF does not have a capability; and

(ii) Assist SWFs in managing or reducing the costs of maintaining an asset management operation in a particular market or instrument. In these and similar circumstances, SWFs carefully select reputable and creditworthy investment managers and enter into written investment management agreements. Such agreements typically provide for:

(i) Specification of an investment mandate;

(ii) An agreed understanding of expected performance and investment risk—including tracking errors— reports, and fees; and

(iii) Where appropriate, a clear undertaking by the investment manager of any promised particular investment methodology or a team to whom historical performance may have been attributed.

➤ *GAPP 18.3. Subprinciple:* A description of the investment policy of the SWF should be publicly disclosed. The description could include qualitative statements on the investment style<sup>213</sup> or investment themes, the investment objectives, the investment horizon, and the strategic asset allocation. These disclosures, together with the disclosure of relevant financial information as described in GAPP 17, should give an indication of risk appetite and exposure. In addition, the SWF may describe the use of leverage in its portfolio or disclose other meaningful measures of financial risk exposure.

➤ *GAPP 19. Principle:* The SWF's investment decisions should aim to maximize risk-adjusted financial returns in a manner consistent with its investment policy, and based on economic and financial grounds. It is a core principle that SWFs' overarching objective is to maximize risk-adjusted financial returns, given the risk tolerance level of the owner. SWFs' investment decisions and activities, therefore, should be guided by and be consistent with this objective.

➤ *GAPP 19.1. Subprinciple:* If investment decisions are subject to other than economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed. Some SWFs may exclude certain

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<sup>213</sup> E.g., active/passive, financial/strategic.

investments for various reasons, including legally binding international sanctions and social, ethical, or religious reasons<sup>214</sup>. More broadly, some SWFs may address social, environmental, or other factors in their investment policy. If so, these reasons and factors should be publicly disclosed.

✦ GAPP 19.2. Subprinciple: The management of an SWF's assets should be consistent with what is generally accepted as sound asset management principles. The SWF should manage its assets and discharge its other duties with care, skill, and diligence. The same applies to delegating authority and in selecting and supervising investment managers.

Sound asset management also requires that each investment be considered in the context of the overall portfolio, and not in isolation only, and as part of an overall investment strategy that incorporates risk and return reasonably suitable to the SWF's approved investment policy and objectives. Fees and costs incurred in performance of its investment activities should be reasonable in amount, and the process of authorization and incurrence, and amounts paid, should be transparent to its owner or its governing body(ies) and follow clear rules and procedures, and be subject to ethic rules<sup>215</sup>.

✦ GAPP 20. Principle: The SWF should not seek or take advantage of privileged information or inappropriate influence by the broader government in competing with private entities. This principle promotes the fair competition of SWFs with private entities. For example, SWFs should not seek advantages such as those arising from privileged access to market sensitive information<sup>216</sup>.

✦ GAPP 21. Principle: SWFs view shareholder ownership rights as a fundamental element of their equity investments' value. If an SWF chooses to exercise its ownership rights, it should do so in a manner that is consistent with its investment policy and protects the financial value of its investments<sup>217</sup>. The SWF should publicly disclose its general approach to voting securities of listed entities, including the key factors guiding its exercise of ownership rights.

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<sup>214</sup> E.g., Kuwait, New Zealand, and Norway.

<sup>215</sup> See GAPP 14.

<sup>216</sup> However, recipient countries may grant to SWFs certain privileges based on their governmental status, such as sovereign immunity and sovereign tax treatment.


<sup>217</sup> See GAPP 15.



SWFs' demonstrated ability to contribute to the stability of global financial markets results in part from their ability to invest on a long term, patient basis. The exercise of voting rights is seen to be important by some SWFs for their capacity to hold assets and preserve value rather than becoming a forced seller and, by definition, a shorter-term investor. The exercise of ownership rights is also seen by some SWFs as a mechanism for keeping the management of a company accountable to the shareholders, and thus contributing to good corporate governance and a sound allocation of resources.

To dispel concerns about potential noneconomic or nonfinancial objectives, SWFs should disclose ex ante whether and how they exercise their voting rights. This could include, for example, a public statement that their voting is guided by the objective to protect the financial interests of the SWF. In addition, SWFs should disclose their general approach to board representation. When SWFs have board representation, their directors will perform the applicable fiduciary duties of directors, including representation of the collective interest of all shareholders. To demonstrate that their voting decisions continue to be based on economic and financial criteria, SWFs could also make appropriate ex post disclosures.

### **3.3.1.9 Risk management and performance measurement**

 **GAPP 22. Principle:** The SWF should have a framework that identifies, assesses, and manages the risks of its operations. It is important for the SWF to have a strong risk management<sup>218</sup> culture, where senior management is engaged in crafting and enforcing risk management processes, and a well-functioning risk management framework to ensure that it is able to identify, assess, and manage its risks to protect its assets and stay within the tolerance levels as set in the investment policy. Adherence to high standards in risk management with sound operational controls and systems will also help achieve the aim of preserving international financial stability as well as maintaining a stable, transparent, and open investment environment.

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<sup>218</sup> Risk management is the process of identifying the desired level of risk, measuring the current level of risk, monitoring the new actual level of risk, and taking actions that bring the actual level of risk to be aligned with the desired level of risk.

The risks that SWFs face in their investment operations can be classified into four broad categories: financial, operational, regulatory, and reputational risks. The main financial risks are market risk<sup>219</sup>, credit risk<sup>220</sup>, and liquidity risk. The main operational risks<sup>221</sup> include people risk (incompetence and fraud), business continuity risk, process risk, technology risk, and legal risk.

The main regulatory risk stems from changes in the laws and regulations governing the operation of SWFs in countries of origin as well as recipient countries, or from changes in the application of such laws and regulations. Reputational risk is the potential that negative publicity regarding an SWF's business practices, whether true or untrue, may cause a decline in investment returns, costly litigation, or loss of counterparties, or impair the home country government's international standing.

➤ *GAPP 22.1. Subprinciple:* The risk management framework should include reliable information and timely reporting systems, which should enable the adequate monitoring and management of relevant risks within acceptable parameters and levels, control and incentive mechanisms, codes of conduct, business continuity planning, and an independent audit function. The measurement and management of financial risks is typically done by using quantitative methodologies and models. To complement these models and to mitigate "model risk", stress tests<sup>222</sup> should regularly be conducted to evaluate the potential effects of macroeconomic and financial variables or shocks. To assess, manage, or mitigate operational risks, there should be an established and documented framework that has clear lines of responsibility, segregation of duties,<sup>223</sup> and reliable control mechanisms.

Codes of conduct and recruitment policies are important to ensure the professional and ethical behaviour of staff involved in the SWF's operations. To ensure that the SWF can continue operating in case of a technology breakdown or natural disaster, contingency planning, including alternative sites of operation, is an important part of the framework. In mitigating regulatory and reputational risks, it is

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<sup>219</sup> E.g., interest rate, foreign currency, equity and commodity price risks.

<sup>220</sup> E.g., issuer, counterparty, and settlement risks.

<sup>221</sup> Operational risks are the risk of loss from failures in a company's systems and procedures or events completely outside of the control of the organization.

<sup>222</sup> A stress test is a simulation technique used on investment portfolios to determine the financial outcome in different scenarios.

<sup>223</sup> The lines of responsibilities and segregation of duties should be clear both at the operational level (e.g., among the front, middle, and back offices) and at the senior management committee level (e.g., between the Investment Committee and the Risk Management Committee).

important to have systems to track current regulatory and legal requirements in each recipient country that the SWF invests in. Impact assessment of any forthcoming changes in the regulatory environment should be conducted regularly. To satisfy the owner and the governing body(ies) that risks in the SWF are managed properly, the risk management framework should be subject to a regular independent audit.

➤ *GAPP 22.2. Subprinciple:* The general approach to the SWF's risk management framework should be publicly disclosed. Public disclosure of the SWF's general approach to its risk management policies and key actions related to governance and the soundness of its operations reassures that the SWF, its governing body(ies), or management adheres to a high standard of managing operational, regulatory, and reputational risks.


However, there are certain elements of the risk management framework, such as information about the alternative sites of operation, that are considered to be sensitive information and should not be disclosed. Adherence to high standards, including transparent operational control and risk management systems, together with a constructive engagement by recipient countries, will help achieve the aim of maintaining a stable, transparent, and open investment environment.

➤ *GAPP 23. Principle:* The assets and investment performance (absolute and relative to benchmarks, if any) of the SWF should be measured and reported to the owner according to clearly defined principles or standards. Accurate and consistent measurement and reporting of investments and investment performance enables the managers of an SWF to make well-informed judgments about their investments.

Reliable performance measurement is also important for back testing of risk measurement models. For the owners and the governing body(ies), this is crucial for assessing how well managers are keeping to their defined objectives. Users of statistics based on the valuation of assets also need to be assured of the sound measurement of the underlying data. Investment benchmarks are an important tool for assessing performance and monitoring the accountability of SWFs. If benchmarks are used, performance assessment and accountability will, inter alia, occur through the comparison of performance of the actual portfolio relative to the benchmark portfolio.



### **3.3.1.10 GAPP implementation**

 **GAPP 24. Principle:** A process of regular review of the implementation of the GAPP should be engaged in by or on behalf of the SWF. It is desirable for each SWF or its owner or governing body(ies) on behalf of the SWF to use the GAPP to review the SWF's existing arrangements and assess its ongoing implementation on a regular basis, with the results reported to its owner or governing body(ies). The implementation can be verified through self-assessment performed by the SWF along with its owner, or other mechanisms such as third-party verification as determined by the SWF or its owner or governing body(ies). The owner or the governing body(ies) may choose to publicly disclose the assessment to the extent it believes such disclosure is consistent with applicable laws and/or regulations and may contribute to stability in international financial markets and enhance trust in recipient countries.

### **3.4 Greece's response**<sup>224</sup>

Greece, as a member state of the EU, has to comply with the European legal framework which was presented at the beginning of this chapter.

In 2002, the Greek government passed Law 3049/2002 (hereinafter referred to as “Denationalisation Law”)<sup>225</sup>. The new Law amended and replaced the previous Law 2000/1991 governing denationalisation<sup>226</sup>.

The most controversial provisions of the new Denationalisation Law are to be found in Article 8, bearing the title “Corporations of public interest and social utility—Special Share”. The Law provides that the Minister of Economy and Finance acting in concert with the Minister of Development and the minister who is competent for the particular enterprise to be denationalised:

(a) decide on those public sector enterprises offering services of public interest and social utility services associated with national defense and security, public health, energy, transportation and communications, the safeguarding of the smooth operation

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<sup>224</sup> Panagiotis K. Staikouras, 2004, “Structural Reform Policy: Privatisation and Beyond—The Case of Greece”, pp. 379-390.

<sup>225</sup> Law 3049/2002, Gazette of the Greek Government, A/212/2002, see appendix pp. 89.

<sup>226</sup> See Law3049/2002, Article 11(1), stating that the provisions of Articles 1–10 of the Law2000/1991, Gazette of the Greek Government A/206/2000, are abolished.

of markets and the exploitation of national resources, and in relation to which the government should consent before the taking of specific decisions of strategic importance;

(b) specify the concept of “public interest” and clarify the decisions of strategic importance for which the government’s consent is needed;

(c) determine the conditions under which the government’s consent will be given<sup>227</sup>.

The relevant ministerial decisions should be taken on the basis of clear and objective criteria, which are able to attain the public interest objective set, not exceeding what is necessary to achieve the stipulated end and being applied in a non-discriminatory manner. The Denationalisation Law explicitly provides that the government’s consent in connection with issues of strategic importance may be secured through the use of the so-called “special share”. In other words, it may be contemplated that the government retains a “special share” in the denationalised enterprises embodying enhanced rights, most notably the right to veto particular decisions of strategic importance<sup>228</sup>.

Part of the members of the Parliament expressed their concern over the compatibility of the “special share” provision with the Community law on freedom of capital movement and establishment. These worries are not unfounded given the European Court of Justice’s decisions, presenting a rather mixed picture in relation to the legality or not of granting “special shares”.

More specifically, the European Court of Justice stands very critical of national measures which have the effect of impeding freedom of capital movement and establishment. It seems to acknowledge that freedom of capital movement and establishment may be lawfully restricted by national measures, provided specific conditions are cumulatively met, namely, that the national measures concerned:

- are applied in a non-discriminatory manner in terms of nationality, that is, they are applied to both nationals and foreigners (legal and natural persons);
- seek to serve overriding requirements of general interest;
- are suitable in achieving the stipulated objective (suitability principle);

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<sup>227</sup> Law 3049/2002, Article 8(1).

<sup>228</sup> Law 3049/2002, Article 8(1)–(2).

– are proportionate to the pursued objective (proportionality principle).

In assessing the suitability and proportionality of the measures, the Court places particular emphasis on whether: (a) such measures are adopted on the basis of precise, objective and stable criteria, which are known in advance to those concerned (e.g., the conditions for applying those measures are plainly specified in advance), and (b) the decision to apply such measures is reasoned and an effective legal remedy<sup>229</sup>.

It is not absolutely clear whether the provisions of the Greek Denationalisation Law comply with the criteria set forth by the European Court of Justice. According to one view, the “special share” system created under the Denationalisation Law is compatible with Community law, to the extent that the Law 3049/2002 expressly provides that the relevant ministerial decisions granting special powers to the government should meet particular requirements<sup>230</sup>. In particular, the ministerial decisions should: (a) refer to enterprises offering services of public interest and social utility, (b) seek to serve overriding general interest objectives, (c) be founded on clear and objective criteria, (d) be applied on a non-discriminatory fashion, (e) be able to achieve the stipulated objective, (e) not exceed what is necessary to accomplish the objective set, and (f) be notified to the parties interested in participating in the privatisation process<sup>231</sup>. On the other hand, a different line of argument holds that the Law, as it stands, does not specify in a precise manner neither the content of the rights conferred upon the government, nor the discretion of the competent ministers concerning the substance of the relevant decisions<sup>232</sup>.

In 2008, a new and more specified law, regarding the so-called “golden share”, was passed by the Greek government. According to Article 11 of Law

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<sup>229</sup> The cases that have been examined by the European Court of Justice are the following:

- a. Case C-58/99, Commission of the European Communities v. Italian Republic [ECR 2000 I-03811].
- b. Case C-503/99, Commission of the European Communities v. Kingdom of Belgium, [ECR 2002 I-04809].
- c. Case C-483/99, Commission of the European Communities v. French Republic [ECR 2002 I-04781].
- d. Case C-367/98, Commission of the European Communities v. Portuguese Republic [ECR 2002 I-04731].
- e. Case C-98/01, Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland [Judgment of the Court on 13 May 2003].
- f. Case C-463/00, Commission of the European Communities v. Kingdom of Spain [Judgment of the Court on 13 May 2003].

<sup>230</sup> Mihalopoulos (2002), p. 1209. Of course, whether the decision of the DMC does in reality satisfy all the aforementioned principles, thus complying with the Community law on freedom of establishment and capital movement is a matter to be judged on a case-by-case basis.

<sup>231</sup> Law 3049/2002, Article 8(1) and Explanatory Memorandum, Article 8.

<sup>232</sup> Mouzoulas (2003), pp. 120–121).

3631/2008<sup>233</sup>, acquisition by a shareholder, other than the Greek government, or its associated companies or by shareholders acting in concert, of at least 20% of the voting rights, in national societies anonyms (SAs) of strategic importance, or state-owned enterprises which have or had monopoly privileges, especially when it comes to companies owning or operating or managing national infrastructure networks, requires the prior approval of the Interministerial Committee on Privatization of Law 3049/2002. Authorization is granted if some evaluation criteria are satisfied, in order to ensure continuous and uninterrupted provision of services and network operation. Below, are some indicative criteria which are taken into consideration by the Interministerial Committee in order to approve such investments:

- a) the experience and reliability of shareholders,
- b) information regarding the investment strategies,
- c) the transparency of transactions,
- d) the business plans,
- e) the size and nature of the investment program,
- f) jobs' safeguarding,
- g) the structure of share capital under the principles of transparency and reciprocity,
- h) the way that the decisions are made.

Furthermore, even if the aforementioned approval has been granted, the Minister of Economy and Finance retains a "golden share" in the sense that it has the right to veto corporate decisions in the following fields:

- a) dissolution or liquidation and appointment of liquidators.
- b) corporate transformation, which may jeopardize the provision of services in areas of strategic importance.
- c) any transfer, change or modification, of their strategic assets which may affect economic and social life and safety of the country.

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<sup>233</sup> See appendix pp. 106.

## **Conclusion**

It is forecasted, that SWFs will increase five-fold by the middle of the next decade and reach \$7-\$11 trillion by 2013<sup>234</sup>. That could make these funds, collectively and perhaps individually, the largest shareholders in many of the world's biggest companies that are today privately owned. At the same time, because of the growth in sovereign business, many more of the world's biggest public companies could be directly controlled by governments<sup>235</sup>.

The reasons behind the rapid growth of state-controlled investment funds and state controlled businesses are still being debated among academics and policymakers. The superficial reasons are clear enough: rapid economic growth in some developing markets, large trade surpluses, and rising oil prices have generated U.S. dollar surpluses in East Asia, the Middle East, Norway, and Russia. But the fact of rapid economic growth and the influx of dollars alone does not ameliorate potential concerns regarding the fact that governments, rather than private market actors, have the power to control the investing of this new-found wealth and may not have the same, market-sensitive set of incentives that characterize the private sector<sup>236</sup>.

Some investment motives<sup>237</sup> of SWFs could potentially lead to excessive risk-taking and a distortion of asset prices. For instance, some observers have expressed a concern that certain SWFs may be prone to an abrupt selling of assets, thereby contributing to market volatility. There are also warns, that some SWFs may acquire stakes in companies of sensitive industries and possibly bail out or support local firms for non-economic reasons. Nevertheless, so far there is no firm evidence of such investment patterns which would also negatively impact market integrity<sup>238</sup>.

Although the existence of the SWFs, raises some concerns which mainly focus on whether their objectives are commercial or driven by political defence or foreign policy considerations, solutions can be found by the introduction of certain key principles that could guide governments when they design and implement investment

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<sup>234</sup> Lipsky, 2008, "SWF Principles Will Cross-Border Investment", pp 1.

<sup>235</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, Sovereign Wealth Funds—A Work Agenda, pp. 6-8.

<sup>236</sup> Available at <http://www.sec.gov/news/testimony/2008/ts030508et.htm>.

<sup>237</sup> E.g. when SWF acquisitions are driven by political considerations.

<sup>238</sup> Available at <http://www.imf.org/external/np/sec/pn/2008/pn0841.htm>.

measures, to address national security concerns. Furthermore, observance of high standards by SWFs and their provision of adequate and timely information will facilitate recipient countries' efforts to implement their commitments and its recommendations for preserving open markets while safeguarding national security.

The resulting framework, introducing principles of further transparency, non-discrimination, liberalisation and standstill, will foster mutually beneficial situations where SWFs enjoy fair treatment in the markets of recipient countries and countries can confidently resist protectionism pressures. The international organisations, OECD, IMF, World Bank can promote and coordinate these efforts.

More specifically, in short, regulation of SWFs' activities by recipient countries includes:

- *Securities Regulation and Corporate Governance.* The investment activities of SWFs can be subject to securities market and related rules in three key dimensions:
  - (i) Reporting requirements on SWF shareholdings;
  - (ii) Application of corporate governance rules of the invested company; and
  - (iii) Market integrity rules that could apply to an SWF as an investor.
- *Foreign Investment Vetting Agencies.* Investment by SWFs may be subject to limitations imposed under the foreign investment regime<sup>239</sup>. A number of countries have special agencies charged with the review of investments based on national security considerations. For example, the Committee on Foreign Investments in the United States reviews transactions from the perspective of U.S. national security. Even where countries have liberalized their foreign investment regimes through multilateral or bilateral investment treaties, they typically reserve the right to oppose foreign investments on public order and national security grounds.
- *Financial Institution Regulation.* Certain investments by SWFs in supervised financial institutions such as banks and insurance companies are subject to prudential rules. Acquisitions of significant shareholdings above, e.g., 10 percent, may be subject to prior approval by supervisors on the basis of a "suitability test" to safeguard sound and prudent management of the financial institution.

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<sup>239</sup> E.g., through capital controls.

- *Regulation of Strategic Sectors.* Beyond the financial sector, industries that are considered to be of strategic or social importance<sup>240</sup> would often be subject to special laws that would include regulation of market structure and behaviour, which may be applied to SWFs.
- *Anti-Monopoly Agencies.* Without limitation to any particular sector, investment activities of SWFs may be subject to scrutiny by regulatory agencies applying anti-monopoly or take-over regulations, principally on market structure grounds<sup>241</sup>.

On balance, several potential channels through which the emergence of SWFs as large global players may affect the global financial system can be identified. In this respect, it is of particular importance that SWFs be sufficiently transparent on their size, asset allocation and investment motives so as to assuage concerns about potentially distorting the effects of SWFs and to reduce uncertainty in financial markets.

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<sup>240</sup> E.g., energy, media and telecommunications.

<sup>241</sup> Approved by Mark Allen and Jaime Caruana, February 29, 2008, *Sovereign Wealth Funds—A Work Agenda*, pp. 19.

## Appendix

CHAPTER 1, page 14

The following table depicts some critical differences among SWFs, State Owned Enterprises and Public Pension Funds.

### Sovereign Investment Vehicle Characteristics

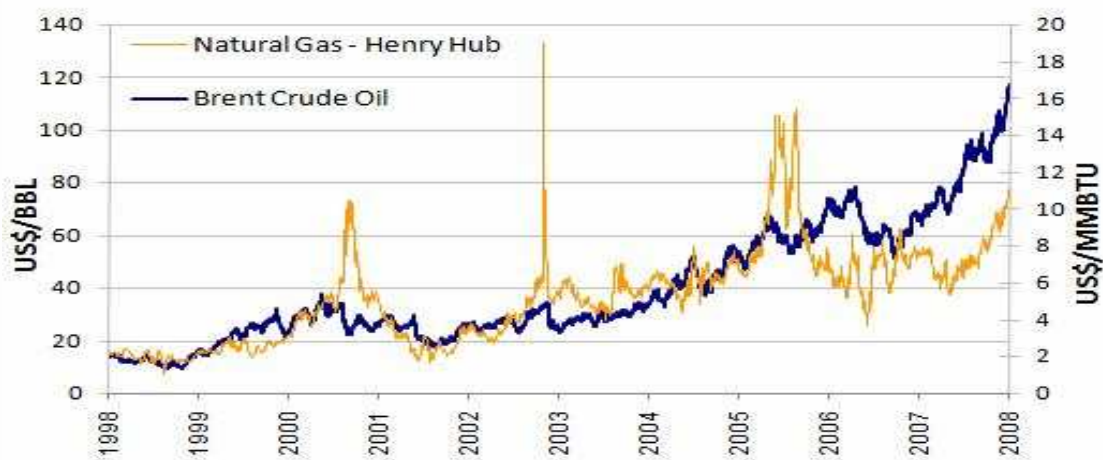
	Sovereign Wealth Funds	State Owned Enterprises	Public Pension Funds
Asset Ownership	Government	Primarily Government	Pension Members
Primary Purpose	Varies	Varies	Fund Defined Benefit Obligations
Funding Source	Commodity / Non-Commodity	Government / Corporate Earnings	Pension Contributions
Government Control	Total	Significant	Insignificant
Disclosure	Varies	Varies	Transparent
Investor Class Growth	High	Steady	Steady
<b>Examples</b>	Abu Dhabi Investment Authority China Investment Corporation Korea Investment Corporation Kuwait Investment Authority	Chinalco Banco da Amazônia Rosneft OJSC (EDF) Electricite de France SA	CalPERS CalSTRS NYSTRS Teacher Retirement System of Texas

\*\*These are generalities, exceptions can be made or blurred.

Source: Sovereign Wealth Fund Institute

CHAPTER 2, page 25

### Oil & Gas Commodity Prices



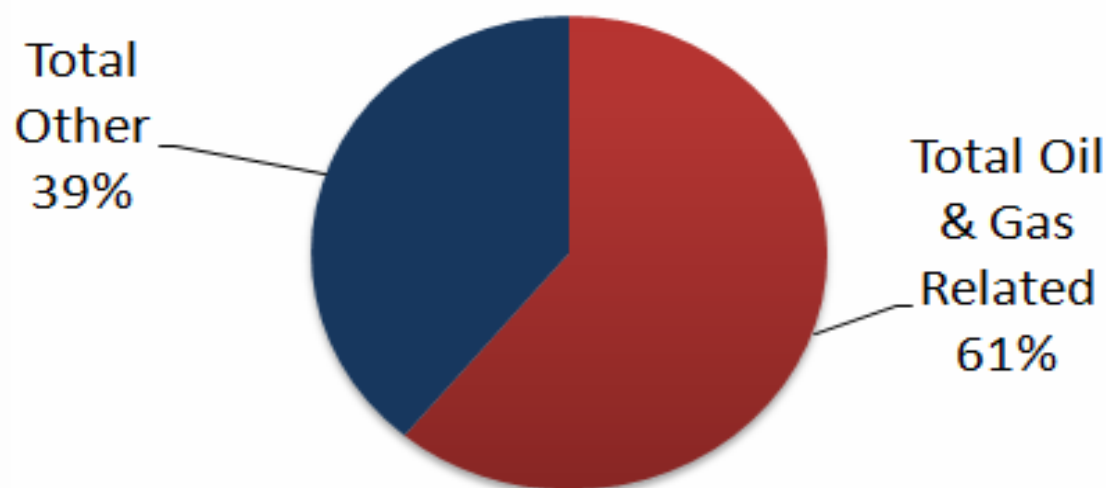
March Yearly Intervals

Sources: Dow Jones Energy Service, ICIS Pricing



The figure below depicts what can be seen on table 3, in short:

## SWFs by Funding Source



Είδος: ΝΟΜΟΣ

Αριθμός: 3049

Έτος: 2002

ΦΕΚ: Α 212 20020910

Τέθηκε σε ισχύ: 10.09.2002

Αρμόδιος Φορέας: Ο ΠΡΟΕΔΡΟΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Ημ.Υπογραφής: 06.09.2002

Τίτλος: Αποκρατικοποίηση επιχειρήσεων του Δημοσίου και άλλες διατάξεις.

Προοίμιο: Εκδίδομε τον ακόλουθο νόμο που ψήφισε η Βουλή:

Θέματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ ΕΠΙΧΕΙΡΗΣΕΩΝ, ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ

Σχόλια:

- Σύμφωνα με την παρ. 13α του δέκατου άρθρου του ν. 3082/2002 (Α'316/16.12.2002), εντός δεκαοκτώ μηνών από τη δημοσίευση του νόμου αυτού

μετοχές της Α.Ε. με την επωνυμία “Ταχυδρομικό Ταμιευτήριο Ελλάδος Ανώνυμη Τραπεζική Εταιρεία” διατίθενται σε ασφαλιστικούς οργανισμούς και ασφαλιστικά ταμεία, σύμφωνα με τη διαδικασία και κατ’ ανάλογο εφαρμογή του παρόντος νόμου και των άλλων κειμένων διατάξεων. Σύμφωνα με την παρ. 2 του άρθρου 7 του ν. 3139/2003 (Α’ 100/30.4.2003), όρος συμβάσεων, που έχουν ήδη συνυπολογηθεί σε εφαρμογή των διαδικασιών αποκρατικοποίησης του παρόντος νόμου ή του ν. 2000/1991, ο οποίος εξαρτά τη θέση σε ισχύ των συμβάσεων αυτών από τη νομοθετική τους κύρωση, δεν δεσμεύει τα συμβαλλόμενα μέρη. Οι συμβάσεις αυτές τίθενται σε ισχύ δέκα ημέρες από τη δημοσίευση του νόμου 3139/2003 (: στις 10.5.2003), εφόσον τα συμβαλλόμενα μέρη δεν συμφωνήσουν διαφορετικά μέσα στην παραπάνω προθεσμία. Σύμφωνα, τέλος, με την παρ. 3 του άρθρου 7 του ν. 3139/2003, οι διατάξεις του παρόντος νόμου, εφαρμόζονται και στις αποκρατικοποιήσεις, στις οποίες δεν έχουν περαιωθεί οι ενέργειες που είναι αναγκαίες για την ολοκλήρωσή τους. Σύμφωνα με την παρ. 1 του άρθρου 17 του ν. 3190/2003 (Α’ 249/30.10.2003), με την ολοκλήρωση κάθε επί μέρους μεταβίβασης, είτε ιδιωτικής επιχείρησης είτε επιχείρησης του Δημοσίου, η οποία εντάσσεται στο πλαίσιο διαδικασίας αποκρατικοποίησης επιχείρησης του Δημοσίου, σύμφωνα με τις διατάξεις του παρόντος νόμου, υπό τη μορφή, ενδεικτικά, συγχώνευσης, ανταλλαγής μετοχών, πώλησης μετοχών, συμμεταβιβάζονται αυτοδικαίως στην αποκτώσα επιχείρηση, η οποία μπορεί να είναι είτε ιδιωτική επιχείρηση είτε επιχείρηση του Δημοσίου, όλες οι διοικητικές άδειες της μεταβιβαζόμενης επιχείρησης. Μετά την ολοκλήρωση της πιο πάνω μεταβίβασης, οι διοικητικές αρχές που είναι αρμόδιες για την έκδοση των διοικητικών αδειών της μεταβιβασθείσας επιχείρησης υποχρεούνται στην έκδοση επιβεβαιωτικής πράξης μεταβίβασης της αντίστοιχης διοικητικής άδειας στο όνομα της αποκτώσας επιχείρησης μέσα σε δέκα (10) ημέρες από την υποβολή σχετικής αίτησης της αποκτώσας επιχείρησης. Σύμφωνα με την περ. α) της παρ. 9 του άρθρου 4 του ν. 3270/2004 (Α’ 187/11/10.2004), η διάθεση των ακινήτων και επιχειρηματικών μονάδων του Ε.Ο.Τ. των οποίων τη διοίκηση, διαχείριση και εκμετάλλευση ασκεί η “ΕΤΑΙΡΕΙΑ ΤΟΥΡΙΣΤΙΚΗΣ ΑΝΑΠΤΥΞΗΣ Α.Ε.” σύμφωνα με το άρθρο 9 παρ. 6 του Ν. 2837/2000, για την εκτέλεση έργων τουριστικής ανάπτυξης και τουριστικών υποδομών, που κρίνεται ότι συμβάλλουν στην προώθηση

της τουριστικής ανάπτυξης της Χώρας, αποφασίζεται από τη Διυπουργική Επιτροπή Αποκρατικοποιήσεων κατά τις διατάξεις του παρόντος νόμου.

\*\*\* Σύμφωνα με την παρ. 2 του άρθρου 1 του ν. 3581/2007 (Α' 140/28.6.2007), η σύναψη των συμβάσεων της παραγράφου 1 του ανωτέρω άρθρου (βλ. σχετικά), εφόσον το αντικείμενό τους περιλαμβάνει μεταβίβαση ή παραχώρηση δικαιώματος του Δημοσίου επί ακινήτου, αποφασίζεται από τη Διυπουργική Επιτροπή Αποκρατικοποιήσεων (Δ.Ε.Α.) του άρθρου 3 του παρόντος νόμου (βλ. οικεία σχόλια), εφαρμοζομένων αναλογικά των διατάξεων του παρόντος νόμου. Ως εποπτεύων Υπουργός, κατά την έννοια της παραγράφου 1 του άρθρου 3 του παρόντος νόμου, νοείται ο Υπουργός στην αρμοδιότητα του οποίου υπάγεται το προς αξιοποίηση ακίνητο και, εφόσον η σύμβαση συνάπτεται και για τη στέγαση δημόσιας υπηρεσίας, ο Υπουργός στην αρμοδιότητα του οποίου υπάγεται η εν λόγω δημόσια υπηρεσία. Η Δ.Ε.Α. ή η Ειδική Γραμματεία Αποκρατικοποιήσεων (Ε.Γ.Α.) του άρθρου 3 του παρόντος νόμου δύναται να ζητά από την Κτηματική Εταιρία του Δημοσίου (Κ.Ε.Δ.) έκθεση, στην οποία παρουσιάζονται λεπτομερώς στοιχεία για ακίνητα του Δημοσίου και εξετάζεται η δυνατότητα αξιοποίησής τους κατά την παράγραφο 1 του ανωτέρω άρθρου (1/βλ. σχετικά). Σύμφωνα με το άρθρο 8 του ν. 3581/2007 (Α' 140/28.6.2007), το Δημόσιο, μετά από σχετική απόφαση της Δ.Ε.Α. και ανάλογη εφαρμογή των διατάξεων του παρόντος νόμου, με τη σύνθεση της παραγράφου 2 του άρθρου 1 του ανωτέρω νόμου (βλ. σχόλια), ή η Κ.Ε.Δ. δύνανται να ιδρύουν ημεδαπές εταιρίες είτε ως μόνος μέτοχος ή εταίρος είτε από κοινού με Ν.Π.Δ.Δ. ή με οποιαδήποτε νομικά πρόσωπα, οι οποίες θα δύνανται ενδεικτικά να προβαίνουν στην απόκτηση κυριότητας ή άλλου εμπράγματος ή ενοχικού δικαιώματος επί ακινήτων, τα οποία στη συνέχεια θα μισθώνονται κατά τις διατάξεις του άρθρου 1 του ανωτέρω νόμου (βλ. σχόλια) από το Δημόσιο, Ν.Π.Δ.Δ. ή Ν.Π.Ι.Δ. της παραγράφου 4 του άρθρου 1 του ανωτέρω νόμου (βλ. σχόλια). Για περισσότερα βλ. ολόκληρο το άρθρο 8 του ν. 3581/2007.

#### ΣΤΟΙΧΕΙΑ ΑΡΘΡΩΝ

Άρθρο: 1

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Πεδίο εφαρμογής

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΠΕΔΙΟ ΕΦΑΡΜΟΓΗΣ

Κείμενο Άρθρου:

ΚΕΦΑΛΑΙΟ Α'

1. Στις διατάξεις του νόμου αυτού υπάγονται οι επιχειρήσεις του Δημοσίου. Για τους σκοπούς του νόμου αυτού ως επιχειρήσεις του Δημοσίου νοούνται οι επιχειρήσεις που αναφέρονται στην παρ. 1 του άρθρου 1 του ν. 2414/1996 (ΦΕΚ 135 Α'), όπως αρχικά ίσχυσε, αυτές που έχουν υπαχθεί ή θα υπαχθούν στις διατάξεις του ίδιου νόμου και τα πιστωτικά ιδρύματα των οποίων η απόλυτη πλειοψηφία του μετοχικού κεφαλαίου ανήκει άμεσα στο Δημόσιο.

2. Με απόφαση της Διυπουργικής Επιτροπής Αποκρατικοποιήσεων που προβλέπεται στην παράγραφο 3 του άρθρου 3 μπορεί να υπάγονται στις διατάξεις του νόμου αυτού και θυγατρικές των επιχειρήσεων του Δημοσίου, όπως αυτές ορίζονται στην παράγραφο 1 και άλλοι φορείς του δημόσιου τομέα, όπως αυτός προσδιορίζεται με την παρ. 6 του άρθρου 1 του ν. 1256/1982 (ΦΕΚ 65 Α'), όπως το άρθρο αυτό αρχικά ίσχυσε.

Άρθρο: 2

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Ορισμοί

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΟΡΙΣΜΟΙ, ΟΡΟΙ ΓΙΑ ΤΟΥΣ ΣΚΟΠΟΥΣ ΤΟΥ ΠΑΡΟΝΤΟΣ  
ΝΟΜΟΥ

Κείμενο Άρθρου:

Για τους σκοπούς του νόμου αυτού οι πιο κάτω όροι έχουν την ακόλουθη έννοια:

α) Αποκρατικοποίηση: η εφάπαξ ή σταδιακή έξοδος επιχειρήσεων του Δημοσίου από τον έλεγχό του.

β) Έλεγχος: η κατοχή της πλειοψηφίας των μετόχων ή το δικαίωμα διορισμού της πλειοψηφίας των μελών του διοικητικού συμβουλίου ή το δικαίωμα διορισμού των οργάνων της διοίκησης επιχείρησης του Δημοσίου.

γ) Μεταβίβαση ελέγχου: η μεταβίβαση με οποιονδήποτε τρόπο είτε των μετοχών και ψήφων της πλειοψηφίας του μετοχικού κεφαλαίου είτε του δικαιώματος διορισμού της πλειοψηφίας των μελών του διοικητικού συμβουλίου ή των οργάνων της διοίκησης είτε η μεταβίβαση του δικαιώματος άσκησης της διαχείρισης της επιχείρησης.

Άρθρο: 3

Ημ/νία: 22.11.2007

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Διυπουργική Επιτροπή Αποκρατικοποιήσεων

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΔΙΥΠΟΥΡΓΙΚΗ ΕΠΙΤΡΟΠΗ ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΩΝ

Σχόλια:

\*\*\* Σύμφωνα με την παρ. 2 του άρθρου 1 του ν. 3581/2007 (Α' 140/28.6.2007), η σύναψη των συμβάσεων της παραγράφου 1 του ανωτέρω άρθρου (βλ. σχετικά), εφόσον το αντικείμενό τους περιλαμβάνει μεταβίβαση ή παραχώρηση δικαιώματος του Δημοσίου επί ακινήτου, αποφασίζεται από τη Διυπουργική Επιτροπή Αποκρατικοποιήσεων (Δ.Ε.Α.) του παρόντος άρθρου, εφαρμοζομένων αναλογικά των διατάξεων του παρόντος νόμου. Ως εποπτεύων Υπουργός, κατά την έννοια της παραγράφου 1 του παρόντος άρθρου, νοείται ο Υπουργός στην αρμοδιότητα του οποίου υπάγεται το προς αξιοποίηση ακίνητο και, εφόσον η σύμβαση συνάπτεται και για τη στέγαση δημόσιας υπηρεσίας, ο Υπουργός στην αρμοδιότητα του οποίου υπάγεται η εν λόγω δημόσια υπηρεσία. Η Δ.Ε.Α. ή η Ειδική Γραμματεία Αποκρατικοποιήσεων (Ε.Γ.Α.) του παρόντος άρθρου δύναται να ζητά από την Κτηματική Εταιρία του Δημοσίου (Κ.Ε.Δ.) έκθεση, στην οποία παρουσιάζονται λεπτομερώς στοιχεία για ακίνητα του Δημοσίου και εξετάζεται η δυνατότητα αξιοποίησής τους κατά την παράγραφο 1 του ανωτέρω άρθρου (1/βλ. σχετικά).

Η παρ. 5 προστέθηκε με την παρ. 1 του άρθρου 26 του ν. 3610/2007 (Α' 258/22.11.2007). Η αναρίθμηση των πρώην παρ. 5, 6 και 7 σε παρ. 6, 7 και 8

αντιστοίχως έγινε -μετά την προσθήκη της παρ. 5- με την παρ. 2 του άρθρου 26 του ν. 3610/2007 (Α' 258/22.11.2007).- Το εντός “ ” εδάφιο της παρ. 8 προστέθηκε με την παρ. 3 του άρθρου 26 του ν. 3610/2007 (Α' 258/22.11.2007).

Κείμενο Άρθρου:

1. Συνιστάται Διυπουργική Επιτροπή Αποκρατικοποιήσεων (Δ.Ε.Α.)\*\*\*. Η Δ.Ε.Α. αποτελείται από τον Υπουργό\*\*\* Οικονομίας και Οικονομικών, ως Πρόεδρο και τους Υπουργούς Ανάπτυξης, Εργασίας και Κοινωνικών Ασφαλίσεων και κατά περίπτωση από τον Υπουργό που εποπτεύει την επιχείρηση του Δημοσίου που υπάγεται στις διατάξεις του νόμου αυτού.
2. Ο Υπουργός Οικονομίας και Οικονομικών εποπτεύει το έργο της αποκρατικοποίησης και είναι εισηγητής στη Δ.Ε.Α.. Η Δ.Ε.Α. αποφασίζει με απόλυτη πλειοψηφία των μελών της.
3. Η λειτουργία της Δ.Ε.Α. διέπεται από τις διατάξεις του ν. 1558/1985 (ΦΕΚ 137 Α'). Η Δ.Ε.Α. χαράσσει την κυβερνητική πολιτική για την αποκρατικοποίηση επιχειρήσεων του Δημοσίου και καθορίζει με αποφάσεις της τις επιχειρήσεις του Δημοσίου που αποκρατικοποιούνται.
4. Συνιστάται στο Υπουργείο Οικονομίας και Οικονομικών Ειδική Γραμματεία Αποκρατικοποιήσεων (Ε.Γ.Α.), με σκοπό την επικουρία του έργου της Δ.Ε.Α.. Η οργάνωση της Ε.Γ.Α., η λειτουργία και οι αρμοδιότητές της, στις οποίες περιλαμβάνεται και η επικουρία του έργου εποπτείας των δημόσιων επιχειρήσεων (ΔΕΚΟ), καθορίζονται με προεδρικό διάταγμα που εκδίδεται με πρόταση του Υπουργού Οικονομίας και Οικονομικών.
5. Με απόφαση του Υπουργού Οικονομίας και Οικονομικών δύναται να ανατίθεται στον Γενικό Γραμματέα Δημοσιονομικής Πολιτικής η παράλληλη άσκηση των καθηκόντων του Ειδικού Γραμματέα Αποκρατικοποιήσεων, χωρίς πρόσθετες αποδοχές.
- “6”(5). Με απόφαση του Υπουργού Οικονομίας και Οικονομικών και του κατά περίπτωση αρμόδιου Υπουργού μπορεί να αποσπώνται στην Ε.Γ.Α., κατ' απόκλιση των περί αποσπάσεων διατάξεων, υπάλληλοι υπουργείων και εποπτευόμενων από αυτά φορέων. Η δαπάνη μισθοδοσίας των υπαλλήλων αυτών βαρύνει τον προϋπολογισμό του Υπουργείου Οικονομίας και Οικονομικών.

“7”(6). Με απόφαση της Δ.Ε.Α., για τις ανάγκες της αποκρατικοποίησης και επικουρίας του έργου της Ε.Γ.Α. μπορεί να συνάπτονται, εκτός των συμβάσεων των συμβούλων που προβλέπονται στο άρθρο 7, και συμβάσεις παροχής ανεξάρτητων υπηρεσιών ή έργου με ειδικούς επιστημονικούς συμβούλους και εμπειρογνώμονες, φυσικά ή νομικά πρόσωπα. Με όμοια απόφαση μπορεί να ορίζεται και η αμοιβή των πιο πάνω προσώπων.

“8”(7). Με απόφαση του Υπουργού Οικονομίας και Οικονομικών, κατά παρέκκλιση των κείμενων διατάξεων, στη θέση του προϊσταμένου της Ε.Γ.Α. μπορεί να αποσπάται διευθυντής της Γενικής Γραμματείας Δημοσιονομικής Πολιτικής του Υπουργείου Οικονομίας και Οικονομικών ή να τοποθετείται υπάλληλος των ειδικών θέσεων του άρθρου 30 του ν. 1558/1985 (ΦΕΚ 137 Α'). “Στην περίπτωση παράλληλης άσκησης των καθηκόντων του Ειδικού Γραμματέα Αποκρατικοποιήσεων από τον Γενικό Γραμματέα Δημοσιονομικής Πολιτικής κατά την παράγραφο 5, στη θέση του προηγούμενου εδαφίου δύναται να τοποθετείται μετακλητός υπάλληλος με βαθμό 2ο της κατηγορίας Ειδικών Θέσεων του άρθρου 76 του ν. 3528/ 2007 (ΦΕΚ 26 Α') (Υπαλληλικού Κώδικα)”.

Άρθρο: 4

Ημ/νία: 30.04.2003

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Μορφές αποκρατικοποιήσεων

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΜΟΡΦΕΣ ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΩΝ

Σχόλια:

- Το εντός “ ” δεύτερο εδάφιο της περ. γ΄ της παρ. 1 προστέθηκε με την παρ. 1 του άρθρου 7 του ν. 3139/2003 β(Α΄100/30.4.2003).

Κείμενο Άρθρου

1. Μορφές αποκρατικοποίησης είναι ενδεικτικά οι ακόλουθες:

α) Η πώληση του συνόλου της επιχείρησης ή περιουσιακών στοιχείων ή τμημάτων αυτής ή κλάδων αυτής.

β) Η εισαγωγή της επιχείρησης σε Χρηματιστήριο Αξιών ή σε άλλη οργανωμένη αγορά.

γ) Η πώληση του συνόλου ή μέρους των μετοχών της επιχείρησης, με ή χωρίς ταυτόχρονη σύναψη συμφωνίας μετόχων, καθώς και η περαιτέρω μεταβίβαση μετοχών της επιχείρησης.

“Στις παραπάνω συμφωνίες μετόχων είναι δυνατόν να συμφωνείται η υποχρέωση του μετόχου πλειοψηφίας να εκλέγει ως μέλη διοικητικού συμβουλίου πρόσωπα υποδεικνυόμενα από το μέτοχο μειοψηφίας ή το δικαίωμα της μειοψηφίας να διορίζει με διάταξη του καταστατικού μέλη του διοικητικού συμβουλίου και πέραν του ενός τρίτου”.

δ) Η παραχώρηση αδειών ή και δικαιωμάτων εκμετάλλευσης της επιχείρησης.

ε) Η σύσταση εταιρείας ή συμμετοχή σε εταιρείες με συνεισφορά μετρητών, περιουσιακών στοιχείων, κλάδων, δικαιωμάτων, μετοχών.

στ) Η κάθε είδους εκμίσθωση επιχείρησης ως συνόλου ή επί μέρους δικαιωμάτων ή περιουσιακών στοιχείων ή τμημάτων ή κλάδων της επιχείρησης.

ζ) Η ανάθεση σε τρίτο της διαχείρισης της επιχείρησης.

η) Η ανταλλαγή μετοχών.

θ) Η ανταλλαγή μετοχών των αποκρατικοποιούμενων επιχειρήσεων με προμέτοχα του Δημοσίου.

ι) Η πώληση μετοχών με ειδικά σύμφωνα, όπως σύμφωνο επαναγοράς από τον πωλητή-μέτοχο Δημόσιο ή επιχείρηση του Δημοσίου, με οποιουδήποτε όρους.

ια) Η πώληση μετοχών σε ημεδαπό ή αλλοδαπό νομικό πρόσωπο για την έκδοση από αυτό κινητών αξιών ανταλλάξιμων με τις πωληθείσες μετοχές.

ιβ) Η πώληση μετοχών σε πιστωτικά ιδρύματα ή χρηματοοικονομικούς οίκους της ημεδαπής ή αλλοδαπής προς το σκοπό περαιτέρω διάθεσης από αυτούς των μετοχών σε τρίτους.

ιγ) Η έκδοση εταιρικών ομολόγων μετατρέψιμων σε μετοχές επιχειρήσεων.

2. Οι μορφές αποκρατικοποίησης μπορεί να εφαρμόζονται αποκλειστικά ή και σε συνδυασμό σε μία ή και διαδοχικές πράξεις.

3. Η Δ.Ε.Α. μπορεί να αποφασίζει και τη λήψη μέτρων, καθορίζοντας τον τρόπο και μεθόδους για τον εκσυγχρονισμό και οργανωτική ή κεφαλαιακή αναδιάρθρωση επιχείρησης του Δημοσίου. Στα μέτρα αυτά μπορεί να προβλέπεται και συγχώνευση ή απορρόφηση ή εξαγορά άλλης επιχείρησης του Δημοσίου σύμφωνα με τις ισχύουσες κάθε φορά σχετικές διατάξεις.



Άρθρο: 5

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Περιεχόμενο απόφασης της Δ.Ε.Α.

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΔΕΑ, ΑΠΟΦΑΣΗ ΤΗΣ ΔΕΑ, ΠΕΡΙΕΧΟΜΕΝΟ ΤΗΣ ΔΕΑ

Κείμενο Άρθρου:

Η απόφαση της Δ.Ε.Α. για την αποκρατικοποίηση επιχείρησης του Δημοσίου καθορίζει τη μορφή, την έκταση, τον τρόπο, τη διαδικασία αποκρατικοποίησης και τα κριτήρια αξιολόγησης των προσφορών και μπορεί να προβλέπει ιδίως:

α. τη σύναψη με ή χωρίς διαγωνισμό των απαραίτητων συμβάσεων, περιλαμβανομένων και των συμβάσεων με συμβούλους σύμφωνα με την παρ. 6 του άρθρου 3 και το άρθρο 7, από τον Υπουργό Οικονομίας και Οικονομικών ή άλλο όργανο εξουσιοδοτημένο από αυτόν, για την πραγματοποίηση της αποκρατικοποίησης και γενικά την εφαρμογή της απόφασης της Δ.Ε.Α., η παρ. 1 του άρθρου 29 του ν. 2789/2000 (ΦΕΚ 21 Α') εφαρμόζεται στις συμβάσεις αυτές,

β. ότι παράλληλα με τη διαδικασία αποκρατικοποίησης, η επιχείρηση μπορεί να διαθέτει μετοχές της με οποιονδήποτε πρόσφορο τρόπο, όπως με αύξηση μετοχικού κεφαλαίου ή με έκδοση μετατρέψιμου ομολογιακού δανείου με παραίτηση ή κατάργηση του δικαιώματος προτίμησης του Δημοσίου,

γ. τη συγκρότηση επιτροπών παρακολούθησης, παραλαβής και εγκρίσεως πληρωμών για το έργο αποκρατικοποίησης, εξυγίανσης και αναδιάρθρωσης. Με όμοια απόφαση μπορεί να προβλέπεται και αμοιβή των μελών των επιτροπών,

δ. ότι οι κάθε είδους δαπάνες και αμοιβές, που προκύπτουν κατά τη διαδικασία αποκρατικοποίησης, βαρύνουν ειδικό λογαριασμό αποκρατικοποιήσεων που τηρείται στην Τράπεζα της Ελλάδος με την ονομασία “Ελληνικό Δημόσιο Λογαριασμός Εσόδων από Αποκρατικοποιήσεις” ή τον προϋπολογισμό της επιχείρησης του Δημοσίου που αποκρατικοποιείται ή αφαιρούνται από το προϊόν πώλησης των μετοχών,

ε. τη διάθεση ποσοστού μετοχών του Ελληνικού Δημοσίου στην αποκρατικοποιούμενη επιχείρηση στους εργαζομένους στην επιχείρηση, τους συνταξιούχους αυτής και τα μέλη του Διοικητικού Συμβουλίου. Οι όροι της διάθεσης,

οι προϋποθέσεις κτήσης των μετοχών από τα πρόσωπα του προηγούμενου εδαφίου, το τίμημα και ο χρόνος αποπληρωμής ή η ενδεχόμενη δωρεάν διάθεσή τους και κάθε σχετική λεπτομέρεια καθορίζονται από τη Δ.Ε.Α. ή, μετά από εξουσιοδότησή της, από το αρμόδιο διοικητικό όργανο της αποκρατικοποιούμενης επιχείρησης. Αν η απόφαση της Δ.Ε.Α. προβλέπει υποχρέωση των προσώπων του προηγούμενου εδαφίου να κρατήσουν τις μετοχές για ορισμένο χρόνο, η δέσμευση σημειώνεται στο Σύστημα 'Αυλων Τίτλων του Κεντρικού Αποθετηρίου Αξιών. Με απόφαση της Επιτροπής Κεφαλαιαγοράς καθορίζονται οι όροι εφαρμογής, στ. τη δωρεάν ή με μειωμένο τίμημα διάθεση επιπλέον μετοχών σε επενδυτές, εφόσον διακρατήσουν τις μετοχές που απέκτησαν κατά τη διαδικασία αποκρατικοποίησης για ορισμένο χρονικό διάστημα.

Άρθρο: 6

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Διαδικασία αποκρατικοποιήσεων

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΔΙΑΔΙΚΑΣΙΑ ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΩΝ

Κείμενο Άρθρου:

1. Ο σύμβουλος που προβλέπεται στο άρθρο 7 και αν δεν υπάρχει σύμβουλος η Ε.Γ.Α. συντάσσει και υποβάλλει στη Δ.Ε.Α. και τη Δημόσια Επιχείρηση Κινητών Αξιών (Δ.Ε.Κ.Α. Α.Ε.) έκθεση συνοδευόμενη από αναλυτικό χρονοδιάγραμμα για την εφαρμογή της απόφασης της Δ.Ε.Α. για την αποκρατικοποίηση της δημόσιας επιχείρησης. Στην έκθεση εξειδικεύεται η μορφή της αποκρατικοποίησης εντοπίζονται οι προϋποθέσεις που θεωρούνται κρίσιμες, τίθενται οι κατευθύνσεις και αναφέρονται οι ενέργειες για την αποκρατικοποίηση και την τήρηση του χρονοδιαγράμματος.
2. Τα όργανα διοίκησης των επιχειρήσεων του Δημοσίου που αποκρατικοποιούνται υποχρεούνται να λαμβάνουν, μέσα στην προθεσμία που καθορίζεται κάθε φορά από τη Δ.Ε.Α., κάθε απόφαση και μέτρο σχετικά με την εφαρμογή των αποφάσεων της Δ.Ε.Α. και την τήρηση του χρονοδιαγράμματος.

3. Στην απόφαση της Δ. Ε.Α. μπορεί να προβλέπεται διαδικασία διαπραγμάτευσης με τους ενδιαφερόμενους επενδυτές, είτε με τη μεσολάβηση του συμβούλου είτε απευθείας από τον πωλητή ή τη Δ.Ε.Κ.Α. Α.Ε..

4. Ο πωλητής, το Δημόσιο ή η Δ.Ε.Κ.Α. Α.Ε. ή η επιχείρηση ή ο σύμβουλος, ανάλογα με την περίπτωση, μπορεί να προσκαλεί τους ενδιαφερόμενους επενδυτές, να υποβάλουν προσφορές, καθορίζοντας στη σχετική πρόσκληση, τη διαδικασία, τις προθεσμίες, το περιεχόμενο των προσφορών και τους λοιπούς όρους υποβολής αυτών, μεταξύ των οποίων και την παροχή από τους ενδιαφερόμενους επενδυτές, σε οποιοδήποτε στάδιο της διαδικασίας κρίνεται αυτό σκόπιμο, εγγυητικών επιστολών.

5. Μετά από έκδοση σχετικής απόφασης από τη Δ.Ε.Α. διενεργείται αποτίμηση της επιχείρησης ή εκτίμηση των περιουσιακών στοιχείων της από ανεξάρτητο σύμβουλο. Αν πρόκειται για ανταλλαγή μετοχών, η αποτίμηση αφορά τόσο τις μετοχές της αποκρατικοποιούμενης επιχείρησης όσο και τις μετοχές που ανταλλάσσονται με αυτές. Η απόφαση της Δ.Ε.Α. για τη διενέργεια αποτίμησης της επιχείρησης ή εκτίμησης των περιουσιακών της στοιχείων μπορεί να αναφέρει τα στοιχεία που θα πρέπει να ληφθούν υπόψη από τον αποτιμητή, όπως ενδεικτικά, η στρατηγική αξία της επιχείρησης υπό τις κρατούσες συνθήκες διοίκησης, χρηματοδότησης και λειτουργίας, τα δεδομένα της επιχείρησης, αλλά και συγκριτικά στοιχεία, καθώς και οι κρατούσες συνθήκες στην κεφαλαιαγορά. Αποτίμηση δεν απαιτείται αν η διαδικασία αποκρατικοποίησης αφορά επιχείρηση της οποίας οι μετοχές είναι εισηγμένες ή πρόκειται να εισαχθούν στο Χρηματιστήριο Αξιών Αθηνών.

6. Για την επιλογή της συνολικά συμφερότερης προσφοράς λαμβάνονται υπόψη ως κριτήρια αξιολόγησης και συνεκτιμώνται ιδίως η εμπειρία στο αντικείμενο της επιχείρησης, η φερεγγυότητα των επενδυτών και η δυνατότητά τους να ολοκληρώσουν τη συναλλαγή, το προσφερόμενο τίμημα, η ποιότητα του επιχειρηματικού σχεδίου, το μέγεθος και το είδος του επενδυτικού προγράμματος, η διατήρηση ή δημιουργία θέσεων εργασίας στην επιχείρηση που πρόκειται να αποκρατικοποιηθεί. Τα κριτήρια γνωστοποιούνται στους ενδιαφερομένους πριν την υποβολή των οριστικών προσφορών.

7. Η απόφαση για το αποτέλεσμα του διαγωνισμού λαμβάνεται από τη Δ.Ε.Α., μετά από ειδικά αιτιολογημένη εισήγηση του συμβούλου ή, σε περίπτωση που δεν υπάρχει

σύμβουλος, της Ε.Γ.Α.. Για την εκτέλεση της απόφασης εφαρμόζονται τα οριζόμενα στην παράγραφο 2.

Άρθρο: 7

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Σύμβουλοι

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΔΕΑ, ΣΥΜΒΟΥΛΟΙ

Σχόλια:

\*\* Σύμφωνα με την παρ. 2 του άρθρου 12 του ν. 3453/2006 (Α' 74/7.4.2006), στις συμβάσεις του παρόντος άρθρου, η διαδικασία προληπτικού ελέγχου των άρθρων 5, 6 και 8 έως 10 του ν. 3310/2005 (ΦΕΚ 30 Α'/βλ. οικεία σχόλια), αντικαθίσταται και ολοκληρώνεται με μόνη την υποβολή από τον υποψήφιο Σύμβουλο στο Εθνικό Συμβούλιο Ραδιοτηλεόρασης, πριν από τη σύναψη της σύμβασης, υπεύθυνης δήλωσης περί της μη συνδρομής των ασυμβιβάστων ιδιοτήτων και απαγορεύσεων κατά την έννοια και υπό τις προϋποθέσεις των άρθρων 3 και 4 του ν.3310/2005 (βλ. οικεία σχόλια). Εάν η υποβολή της ως άνω υπεύθυνης δήλωσης δεν είναι δυνατή, ο υποψήφιος σύμβουλος οφείλει να δηλώσει υπεύθυνα στην Αναθέτουσα Αρχή τους λόγους, εφαρμοζομένου αναλόγως στην περίπτωση αυτή, για ημεδαπές και αλλοδαπές επιχειρήσεις, του τελευταίου εδαφίου της παρ. 2 του άρθρου 8 του ν. 3310/2005 (βλ. οικεία σχόλια).

Κείμενο Άρθρου:

\*\* (βλ. σχόλια)

1. Με απόφαση της Δ.Ε.Α. μπορεί να συνάπτονται, για τις ανάγκες της αποκρατικοποίησης, συμβάσεις\*\* παροχής ανεξάρτητων υπηρεσιών ή έργου με χρηματοοικονομικούς και άλλους συμβούλους.
2. Με απόφαση της Δ.Ε.Α. καθορίζονται οι υπηρεσίες που παρέχουν οι σύμβουλοι, που μπορεί να είναι: υπηρεσίες και συμβουλές οργανωτικές, χρηματοοικονομικές, αναδόχου έκδοσης, νομικές, τεχνικές, λογιστικές, ελεγκτικές, μελέτη στρατηγικού σχεδιασμού, υπηρεσίες και συμβουλές επικοινωνιακής πολιτικής προβολής,

υπηρεσίες ανθρώπινου δυναμικού, υπηρεσίες διοίκησης έργου, αναλογιστικές μελέτες, φοροτεχνικές μελέτες.

3. Η αμοιβή των συμβούλων μπορεί να συναρτάται και με την επιτυχία του επιδιωκόμενου αποτελέσματος.

4. Αν για τις υπηρεσίες που προβλέπονται στην παράγραφο 2 απαιτείται η παροχή υπηρεσιών τρίτων, η σχετική δαπάνη περιλαμβάνεται στην αμοιβή των συμβούλων εφόσον η χρησιμοποίησή τους έχει εγκριθεί από τη Δ.Ε.Α. ή τον Υπουργό Οικονομίας και Οικονομικών και εφόσον δεν προβλέπεται διαφορετικά στη σύμβαση.

5. Οι σύμβουλοι πρέπει να έχουν κύρος και εμπειρία στα αντίστοιχα θέματα και ειδικότερα σε αποκρατικοποιήσεις. Οι σύμβουλοι οφείλουν να τηρούν τους κανόνες δεοντολογίας του επαγγέλματός τους και το επαγγελματικό απόρρητο, ακόμη και μετά το πέρας της εργασίας τους. Οι σύμβουλοι οφείλουν να ενημερώνουν την Ε.Γ.Α. αν συντρέχει περίπτωση τα συμφέροντα του Δημοσίου να συγκρούονται προς τα συμφέροντα των ιδίων ή τρίτου προς τον οποίο προσφέρουν ή πρόσφεραν πρόσφατα τις υπηρεσίες τους.

Οι σύμβουλοι οφείλουν να διαθέτουν έμπειρο προσωπικό με την κατάλληλη εξειδίκευση, να οργανώνουν, διοικούν και διαχειρίζονται το έργο τους με τρόπο ώστε να μην καθυστερεί τη διαδικασία αποκρατικοποίησης και με το πέρας της εργασίας τους να παραδίδουν στην Ε.Γ.Α. όλο το υλικό που παρήχθη στη διάρκειά της.

6. Οι σύμβουλοι δικαιούνται να έχουν άμεση πρόσβαση χρήσεως και λήψεως αντιγράφων όλων των αναγκαίων οικονομικών, λογιστικών, νομικών και λοιπών στοιχείων της επιχείρησης και έχουν εν γένει δικαιώματα ελέγχου αντίστοιχα προς εκείνα των Ορκωτών Ελεγκτών, εφαρμοζομένων των κυρώσεων που προβλέπονται στην παράγραφο 12 του άρθρου 38 του ν. 2065/1992 (ΦΕΚ 113 Α').

Άρθρο: 8

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Επιχειρήσεις δημοσίου συμφέροντος και κοινής ωφέλειας - Ειδική Μετοχή

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΕΠΙΧΕΙΡΗΣΕΙΣ ΔΗΜΟΣΙΟΥ ΣΥΜΦΕΡΟΝΤΟΣ, ΚΟΙΝΗ  
ΩΦΕΛΕΙΑ, ΕΙΔΙΚΗ ΜΕΤΟΧΗ

Κείμενο Άρθρου:

1. Με κοινές αποφάσεις των Υπουργών Οικονομίας και Οικονομικών, Ανάπτυξης και του κατά περίπτωση συναρμόδιου υπουργού:

α) καθορίζονται οι αποκρατικοποιούμενες επιχειρήσεις του Δημοσίου που παρέχουν υπηρεσίες δημοσίου συμφέροντος και κοινής ωφέλειας, που συνδέονται με την άμυνα και ασφάλεια της χώρας, τη δημόσια υγεία, την ενέργεια, τις μεταφορές και επικοινωνίες, τη διασφάλιση της εύρυθμης λειτουργίας των αγορών, την εκμετάλλευση πλουτοπαραγωγών πηγών της χώρας, για τις οποίες απαιτείται η συναίνεση του Δημοσίου στη λήψη ορισμένων στρατηγικής σημασίας αποφάσεων,

β) περιγράφεται το προστατευόμενο κάθε φορά αγαθό και εξειδικεύονται οι στρατηγικής σημασίας αποφάσεις για τις οποίες απαιτείται η συναίνεση του Δημοσίου,

γ) καθορίζονται οι προϋποθέσεις υπό τις οποίες θα παρέχεται η συναίνεση του Δημοσίου.

Οι αποφάσεις αυτές λαμβάνονται με κριτήρια σαφή και αντικειμενικά, ικανά να επιτύχουν τον επιδιωκόμενο σκοπό, τα οποία δεν θα υπερβαίνουν το προσήκον μέτρο για την επίτευξη του επιδιωκόμενου αποτελέσματος και θα εφαρμόζονται χωρίς διακρίσεις.

2. Με τις κοινές υπουργικές αποφάσεις της παραγράφου 1, μπορεί να προβλέπεται ότι το Δημόσιο θα διατηρεί αριθμό μετοχών με ενσωματωμένα αυξημένα δικαιώματα (“ειδική μετοχή”), όπως της αρνησικυρίας στη λήψη αποφάσεων που έχουν χαρακτηριστεί σύμφωνα με την παράγραφο 1 ως στρατηγικής σημασίας.

Άρθρο: 9

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Άλλες ρυθμίσεις

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΑΛΛΕΣ ΡΥΘΜΙΣΕΙΣ

Κείμενο Άρθρου:

1. Για τους σκοπούς της αποκρατικοποίησης οι μετοχές του Δημοσίου στην επιχείρηση που αποκρατικοποιείται μπορεί να μεταβιβάζονται κατά κυριότητα, χωρίς αντάλλαγμα, προσωρινά για ορισμένο χρόνο, όπως θα ορίζεται κάθε φορά στην απόφαση της Δ.Ε.Α. και σύμφωνα με τις παραγράφους 4 και 5 του άρθρου 2 του ν. 2526/1997 (ΦΕΚ 205 Α'), στην ανώνυμη εταιρεία “Δημόσια Επιχείρηση Κινητών Αξιών” (Δ.Ε.Κ.Α. Α.Ε.), η οποία και εκπροσωπεί το Δημόσιο στις γενικές συνελεύσεις της επιχείρησης.
2. Με όμοια απόφαση μπορεί να περιέρχονται στο Δημόσιο ή τη Δ.Ε.Κ.Α. Α.Ε. μετοχές επιχειρήσεων που έχουν υπαχθεί στις διατάξεις του ν. 2000/1991 (ΦΕΚ 206 Α').
3. Με απόφαση της Γ.Σ. των μετόχων επιχείρησης του Δημοσίου, που λαμβάνεται με την απαρτία και πλειοψηφία που προβλέπονται στο άρθρο 29 παράγραφοι 3, 4, 5 και 6 και στο άρθρο 31 παράγραφοι 3 και 4 του κ.ν. 2190/1920 (ΦΕΚ 37 Α') μπορεί να καταργούνται περιορισμοί που επιβάλλονται από διάταξη καταστατικού και αναφέρονται στην απαγόρευση τροποποίησης του καταστατικού ή ορισμένων διατάξεών του. Διατάξεις όμως που αναφέρονται σε υποχρεωτικό ποσοστό συμμετοχής στο μετοχικό κεφάλαιο της επιχείρησης ή εκπροσώπησης στα όργανά της του Δημοσίου (συνυπολογιζομένης και της συμμετοχής της Δ.Ε.Κ.Α. Α.Ε.), καθώς και των εργαζομένων ή διατάξεις που αναφέρονται σε δικαιώματα του Δημοσίου που προστατεύονται με ειδική μετοχή ή που ρυθμίζονται σύμφωνα με τις διατάξεις του άρθρου 8, δεν καταργούνται ούτε τροποποιούνται με απόφαση της Γ.Σ. των μετόχων της επιχείρησης του Δημοσίου.
4. Με προεδρικά διατάγματα, που εκδίδονται μετά από πρόταση των υπουργών μελών της Δ.Ε.Α., και των συναρμόδιων κατά περίπτωση υπουργών, μπορεί να καταργούνται ή να συγχωνεύονται οργανισμοί ή επιχειρήσεις του Δημοσίου, εκτός ανωνύμων εταιρειών, να ρυθμίζονται θέματα μεταφοράς, ένταξης, κατάταξης ή απόλυσης του προσωπικού και να προβλέπεται η μετάταξη του πλεονάζοντος προσωπικού σε νομικά πρόσωπα του ευρύτερου δημόσιου τομέα, όπως αυτός ορίζεται στο άρθρο 1 του ν. 2190/1994 (ΦΕΚ 28 Α'). Με όμοιο προεδρικό διάταγμα καθορίζονται η τύχη της περιουσίας επιχείρησης που καταργείται και ο οργανισμός ή το καταστατικό, που διέπει την επιχείρηση που προκύπτει μετά από τη συγχώνευση.

5. Σε κάθε περίπτωση αποκρατικοποίησης επιχείρησης του Δημοσίου με οποιαδήποτε μορφή δεν εφαρμόζεται η παράγραφος 9 του άρθρου 7 του ν. 2843/2000 (ΦΕΚ 219 Α').

Άρθρο: 10

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Φορολογικά και άλλα θέματα

Λήμματα: ΔΗΜΟΣΙΟ, ΕΠΙΧΕΙΡΗΣΕΙΣ, ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΗ  
ΕΠΙΧΕΙΡΗΣΕΩΝ, ΦΟΡΟΛΟΓΙΚΑ ΘΕΜΑΤΑ

Σχόλια:

\*\*\* Σύμφωνα με την παρ 1 του άρθρου 13 του ν. 3581/2007 (Α' 140/28.6.2007), οι συμβάσεις της παραγράφου 1 του άρθρου 1 (βλ. σχετικά) και του άρθρου 6 του ανωτέρω νόμου (βλ. σχετικά), καθώς και όλες οι συνδεδεμένες με αυτές πράξεις, περιλαμβανομένων των μεταγραφών, απαλλάσσονται από κάθε φόρο, περιλαμβανομένου και του φόρου εισοδήματος λόγω υπεραξίας, τέλος, τέλος χαρτοσήμου, εισφορά ή άλλη επιβάρυνση υπέρ του Δημοσίου ή τρίτου, με την επιφύλαξη των διατάξεων του ν. 2859/2000 (Α' 248) και του ν. 1676/1986 (Α' 204). Στην περίπτωση που η σύναψη των συμβάσεων της παραγράφου 1 του άρθρου 1 του ν. 3581/2007 (βλ. σχόλια) αποφασίζεται από τη Δ.Ε.Α., καθώς επίσης και στην περίπτωση που η εταιρία του άρθρου 8 ή άλλη εταιρία προβαίνει σε τιτλοποίηση απαιτήσεων από ακίνητα, σύμφωνα με το άρθρο 11 του ν. 3156/2003 (Α' 157/βλ. σχόλια) εφαρμόζονται και οι τυχόν ευρύτερες φορολογικές απαλλαγές του παρόντος άρθρου και του άρθρου 14 του ν. 3156/2003 (βλ. σχόλια) αντιστοίχως.

Κείμενο Άρθρου:

\*\*\* (βλ. σχόλια)

1. Οι συμβάσεις και πράξεις που συνομολογούνται σε εφαρμογή διαδικασιών αποκρατικοποίησης ή εξυγίανσης σύμφωνα με το νόμο αυτόν, περιλαμβανομένης και της πράξης ή της σύμβασης συγχώνευσης ή της διάσπασης ή της κατάργησης ή διάλυσης επιχειρήσεων, και οι σχετιζόμενες με αυτές μεταβιβάσεις ακινήτων, κινητών, μετοχών ή πάσης φύσεως δικαιωμάτων, εισφορές περιουσιακών στοιχείων, κινητών ή ακινήτων ή επιχειρηματικών κλάδων ή τμημάτων, μεταγραφές και πάσης



φύσεως συμβάσεις και πράξεις προς πραγμάτωσή τους, περιλαμβανομένης της συστάσεως και εγγραφής υποθήκης, της εγγραφής προσημειώσεως υποθήκης και της συστάσεως ενεχύρου, απαλλάσσονται από οποιονδήποτε φόρο, περιλαμβανομένου και του φόρου εισοδήματος λόγω υπεραξίας, τέλος, τέλος χαρτοσήμου, εισφορά, δικαίωμα ή οποιαδήποτε άλλη επιβάρυνση υπέρ του Δημοσίου ή τρίτων, με την επιφύλαξη των διατάξεων του ν. 2859/2000 (ΦΕΚ 248 Α') και του ν. 1676/1986.

2. Με προεδρικά διατάγματα που εκδίδονται με πρόταση των Υπουργών μελών της Δ.Ε.Α. και των κατά περίπτωση συναρμόδιων Υπουργών είναι δυνατόν να περιορισθούν τα δικαιώματα και οι αμοιβές συμβολαιογράφων, δικηγόρων και υποθηκοφυλάκων, για κάθε πράξη της παραγράφου 1 του άρθρου αυτού καθώς και της παραγράφου 3 του άρθρου 4.

3. Κατά την εκτέλεση των συμβάσεων που προβλέπονται στην παράγραφο 1 :

(α) Η μεταβίβαση ονομαστικών ή ανώνυμων μετοχών που δεν έχουν εισαχθεί στο Χρηματιστήριο γίνεται με ιδιωτικό έγγραφο που κατατίθεται στην αρμόδια δημόσια οικονομική υπηρεσία μέσα σε δέκα (10) ημέρες από την υπογραφή του.

(β) Για τη μεταβίβαση περιουσιακών στοιχείων δεν έχουν εφαρμογή διατάξεις αναπτυξιακών νόμων που αναφέρονται σε περιορισμούς ως προς τη δυνατότητα μεταβίβασης περιουσιακών στοιχείων επιχειρήσεων που έχουν ενισχυθεί και στις κυρώσεις σε περίπτωση μεταβίβασής τους.

(γ) Δεν εφαρμόζονται κυρώσεις που έχουν επιβληθεί και εκκρεμεί η εφαρμογή τους σε βάρος δημόσιων επιχειρήσεων για ενισχυθείσες από αναπτυξιακούς νόμους επενδύσεις τους λόγω παράβασης διατάξεων των εν λόγω νόμων ή όρων των αποφάσεων υπαγωγής στους νόμους αυτούς.

(δ) Επίσης, δεν εφαρμόζονται οι διατάξεις των αναπτυξιακών νόμων ή οι όροι των αποφάσεων υπαγωγής των παραπάνω επενδύσεων στους αναπτυξιακούς νόμους, που προβλέπουν την επιβολή κυρώσεων για παραβάσεις που πραγματοποιήθηκαν πριν την υπογραφή της σχετικής σύμβασης.

4. Με κοινή απόφαση του Υπουργού Οικονομίας και Οικονομικών και του κατά περίπτωση αρμόδιου υπουργού μπορεί να αποδίδεται σε επιχείρηση του Δημοσίου μέρος της δαπάνης στην οποία υποβλήθηκε αυτή για παροχή υπηρεσιών κοινής ωφέλειας που της επιβλήθηκε από διάταξη νόμου.

5. Οι αρμόδιες φορολογικές ή ασφαλιστικές αρχές υποχρεούνται να αρχίσουν αμέσως με την υποβολή της αντίστοιχης αίτησης και να ολοκληρώσουν μέσα σε ένα μήνα από την έναρξή τους τους σχετικούς ελέγχους επιχειρήσεων που πρόκειται να αποκρατικοποιηθούν.

6. Αν η διαδικασία ή οι όροι της αποκρατικοποίησης προβλέπουν την απόσχιση κλάδων ή την εισφορά περιουσιακών στοιχείων, κλάδων ή δικαιωμάτων, οι σχετικές αποτιμήσεις πρέπει να ολοκληρώνονται μέσα σε ένα μήνα από την υποβολή της σχετικής αίτησης.

Άρθρο: 11

Ημ/νία: 10.09.2002

Περιγραφή όρου θησαυρού: ΑΠΟΚΡΑΤΙΚΟΠΟΙΗΣΕΙΣ

Τίτλος Άρθρου: Καταργούμενες και μεταβατικές διατάξεις Κεφαλαίου Α'

Κείμενο Άρθρου:

1. Τα άρθρα 1 έως και 10 του ν. 2000/1991 καταργούνται.
2. Κάθε διάταξη νόμου αντίθετη με το νόμο αυτόν καταργείται.
3. Όπου στην κείμενη νομοθεσία γίνεται παραπομπή ή αναφορά στο ν. 2000/1991, η παραπομπή ή αναφορά αυτή θεωρείται εφεξής στις ανάλογες διατάξεις του νόμου αυτού.
4. Αποφάσεις για την αποκρατικοποίηση επιχειρήσεων του Δημοσίου που έχουν ληφθεί πριν από την έναρξη ισχύος των διατάξεων του νόμου αυτού εξακολουθούν να ισχύουν.

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Είδος: ΝΟΜΟΣ

Αριθμός: 3631

Έτος: 2008

ΦΕΚ: Α 6 20080129

Τέθηκε σε ισχύ: 29.01.2008

Αρμόδιος Φορέας: Ο ΠΡΟΕΔΡΟΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Ημ.Υπογραφής: 25.01.2008

Τίτλος: Σύσταση Εθνικού Ταμείου Κοινωνικής Συνοχής και άλλες διατάξεις.

Προοίμιο: Εκδίδομε τον ακόλουθο νόμο που ψήφισε η Βουλή:

## ΣΤΟΙΧΕΙΑ ΑΡΘΡΩΝ

Άρθρο: 11

Ημ/νία: 29.01.2008

Περιγραφή όρου θησαυρού: ΔΗΜΟΣΙΕΣ ΕΠΙΧΕΙΡΗΣΕΙΣ

Σχόλια:

\*\*\*Σύμφωνα με την παρ. 5 η ισχύς των διατάξεων του παρόντος άρθρου αρχίζει από την κατάθεσή του στη Βουλή των Ελλήνων.

Κείμενο Άρθρου:

1. Επί ανωνύμων εταιριών εθνικής στρατηγικής σημασίας, που έχουν ή είχαν μονοπωλιακό χαρακτήρα, και ιδίως όταν πρόκειται για εταιρίες που έχουν στην κυριότητά τους ή εκμεταλλεύονται ή διαχειρίζονται εθνικά δίκτυα υποδομών, η απόκτηση από άλλο μέτοχο, εκτός του Ελληνικού Δημοσίου, ή από συνδεδεμένες με αυτόν επιχειρήσεις κατά την έννοια του άρθρου 42 ε του κ.ν. 2190/1920, ή από μετόχους που δρουν από κοινού με εναρμονισμένο τρόπο, δικαιωμάτων ψήφου από 20% του συνολικού μετοχικού κεφαλαίου και άνω, προϋποθέτει την προγενέστερη έγκριση της Διυπουργικής Επιτροπής Αποκρατικοποιήσεων του ν. 3049/2002, κατά τη διαδικασία του νόμου αυτού.
2. Η έγκριση χορηγείται εφόσον πληρούνται κριτήρια αξιολόγησης προς όφελος του δημοσίου συμφέροντος, ώστε να διασφαλίζεται η συνεχής και απρόσκοπτη παροχή των προσφερόμενων υπηρεσιών και λειτουργία των δικτύων. Ενδεικτικά λαμβάνονται υπόψη ως κριτήρια αξιολόγησης και συνεκτιμώνται: α) η εμπειρία των τρίτων μετόχων στο αντικείμενο των ανωτέρω επιχειρήσεων, β) η φερεγγυότητά τους, γ) πληροφορίες αναφορικά με τις επενδυτικές τους στρατηγικές, δ) η διαφάνεια των συναλλαγών τους, ε) τα συγκεκριμένα επιχειρηματικά τους σχέδια, στ) το μέγεθος και το είδος του επενδυτικού τους προγράμματος, ζ) το ιδιοκτησιακό τους καθεστώς, η) η διασφάλιση των θέσεων εργασίας, θ) η δομή του μετοχικού τους κεφαλαίου και ιδίως η συμμετοχή κεφαλαίων εκτός της Ευρωπαϊκής Ένωσης, βάσει της αρχής της διαφάνειας και της αμοιβαιότητας, ι) ο τρόπος λήψεως αποφάσεων.

3. Οι αποφάσεις των ως άνω εταιριών εθνικής στρατηγικής σημασίας που αναφέρονται στα ακόλουθα θέματα υπόκεινται για την εγκυρότητά τους σε έγκριση του Υπουργού Οικονομίας και Οικονομικών προς διασφάλιση του δημοσίου συμφέροντος. Α) Στη διάλυση της εταιρίας, τη θέση της σε εκκαθάριση και τον ορισμό εκκαθαριστών. Β) Σε οποιοδήποτε εταιρικό μετασχηματισμό των ανωτέρω επιχειρήσεων, όπως ενδεικτικά στη μετατροπή, τη συγχώνευση με άλλη εταιρία, τη συγχώνευση με σύσταση νέας ανώνυμης εταιρίας, τη διάσπαση, με οποιαδήποτε μορφή και αν αυτή πραγματοποιείται, ή την απόσχιση κλάδου ή κλάδων, η οποία μπορεί να θέσει σε κίνδυνο την παροχή υπηρεσιών σε τομείς στρατηγικής σημασίας. Γ) Σε οποιαδήποτε μεταφορά, μεταβολή ή μετατροπή, οποιαδήποτε εκχώρηση, παροχή ως εγγύηση, καθώς και σε οποιαδήποτε μεταβολή ή αλλαγή του προορισμού των στρατηγικής σημασίας στοιχείων του ενεργητικού των ανωτέρω εταιριών και των βασικών δικτύων και υποδομών για την οικονομική και κοινωνική ζωή της χώρας, καθώς και για την ασφάλειά της.

4. Η έγκριση της προηγούμενης παραγράφου παρέχεται με υπουργική απόφαση που εκδίδεται εντός χρονικού διαστήματος τριάντα (30) ημερών από της υποβολής της αποφάσεως της εταιρείας στον Υπουργό. Σε περίπτωση παρόδου άπρακτης της προθεσμίας αυτής, θεωρείται ότι η απαιτούμενη έγκριση έχει παρασχεθεί.

5. Η ισχύς των διατάξεων του παρόντος άρθρου αρχίζει από την κατάθεσή του στη Βουλή των Ελλήνων.

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