



SOVEREIGN WEALTH FUNDS REPORT

REGULATORY PRESSURE ON SOVEREIGN WEALTH FUNDS CONTINUES

Regulatory agencies are paying much closer attention to Sovereign Wealth Funds as they continue to make headlines. Concern among potential recipient countries is being raised by the increasing international investment activity of Sovereign Wealth Funds with excess liquidity.

U.S. Committee on Foreign Investments

On April 21st, the U.S. Department of the Treasury issued proposed regulations for the Committee on Foreign Investment in the United States (“CFIUS”) in response to the recent increase in activity of Sovereign Wealth Funds. More recently, on May 2nd, the Treasury held a public meeting to solicit comments on the proposed regulations. The Treasury is also accepting final written comments until June 9th, 2008.

The Treasury’s proposed regulations are an attempt to sharpen the mandate of CFIUS, following on the passage of the Foreign Investment and National Security Act of 2007 (“FINSAs”). FINSAs allows for more specific rules regarding the oversight and approval of foreign investment in the United States. FINSAs provides authority for the President and, as a result, CFIUS as an executive committee, to “review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States.”

Greater Discretion to Determine Control

The proposed regulations specifically address two main issues relating to CFIUS review: what types of

transactions are covered, and what the proper definition of “control” is for purposes of the review.

According to the proposed regulations, a transaction would be defined as a “merger, acquisition, or takeover” whether proposed or already completed. In contrast, the proposed regulations define “control” rather vaguely, as the direct or indirect power to determine or decide important matters affecting a company. Under this definition, CFIUS purports to consider all relevant factors in order to evaluate whether a foreign entity can determine or decide such important matters.

Who Should Be Concerned?

The public meeting initiated important discussions regarding potential issues with the proposed regulations. Of particular concern to Sovereign Wealth Funds is the lack of clarity regarding who must submit a transaction for CFIUS review, particularly when Sovereign Wealth Funds act as limited partners or members to domestic collective investment vehicles. Further, the lack of regulation regarding confidentiality and coordination with other branches of the government risks the possibility of disclosure of confidential information to Congress and potentially throughout the public at large.

IMF Best Practices Initiative

The Treasury regulations were issued after a flurry of activity by the International Monetary Fund (“IMF”). In October 2007, the IMF participated in a discussion with various U.S. Government officials as well as the heads of several Sovereign Wealth Funds, including China, Kuwait, Saudi Arabia, Singapore and the United Arab Emirates. The IMF, following this discussion, was given the task of identifying and clarifying a set of best-practices for Sovereign Wealth Funds.

The IMF hopes to issue final guidelines in October 2008 – though no specific guidelines have yet been finalized. The IMF has released a Working Agenda for Sovereign Wealth Funds that discusses the most salient issues such as increased transparency, stronger corporate governance, and the importance of clearly established legal frameworks and structures.



INTERNATIONAL FUNDS GROUP

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