



**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE**

**DAF/INV/WD(2008)16  
For Official Use**

**FREEDOM OF INVESTMENT, NATIONAL SECURITY AND "STRATEGIC" INDUSTRIES:**

**Tour d'Horizon of Recent Developments**

**December 17, 2008**

*This document is for consideration at Roundtable IX on "Freedom of Investment, National Security and 'Strategic' Industries" on December 17, 2008 [under item 3.a. of the draft agenda DAF/INV/A(2008)4].*

Kathryn Gordon, Telephone 331 45 24 98 42 Email: [kathryn.gordon@oecd.org](mailto:kathryn.gordon@oecd.org) or April Tash,  
Telephone 331 45 24 90 93 Email: [april.tash@oecd.org](mailto:april.tash@oecd.org)

**JT03256491**

## TABLE OF CONTENTS

TOUR D’HORIZON OF RECENT DEVELOPMENTS .....	3
FRANCE – STRATEGIC INVESTMENT FUND .....	4
GERMANY – DRAFT INVESTMENT LAW .....	6
GERMANY – VOLKSWAGEN LAW .....	8
ITALY – NATIONAL INTERESTS COMMITTEE .....	9
MEXICO – OIL AND GAS LEGISLATION .....	11
THE UNITED STATES – NEW IMPLEMENTING REGULATIONS .....	12
FOREIGN INVESTMENT POLICIES IN THE CONTEXT OF THE FINANCIAL CRISIS .....	15
UNITED KINGDOM .....	16
MIDDLE EAST SOVEREIGN WEALTH FUNDS .....	18
ANSWERS TO QUESTIONS POSED AT EARLIER ROUNDTABLES .....	20
INDIA .....	20

## **TOUR D'HORIZON OF RECENT DEVELOPMENTS**

1. This note is designed to support discussions of recent investment policy measures by participants in Roundtable IX under the “Freedom of Investment, National Security and ‘Strategic Industries’” process. It is based on notifications by participants and articles from the media. It covers the time period since the last Roundtable (held on 8 October 2008) and presents material on recent investment measures or on policy discussions and debates in participating countries. In a separate section, it poses questions relating to policies relating to foreign investment in financial services in the context of the financial crisis. The final section presents countries’ written answers to questions.

## FRANCE – STRATEGIC INVESTMENT FUND

**Press Release – Caisse des Dépôts; Paris, 20 November 2008**

### *Creation of the Strategic Investment Fund (SIF)*

The President of the French Republic announced this morning in Montrichard the creation of a Strategic Investment Fund (SIF), which is intended to boost the equity and to stabilise the capital of French businesses. He has decided to entrust the management of this fund to Caisse des Dépôts.

This mission is consistent with Caisse des Dépôts' identity as a long-term investor that was affirmed in its Elan 2020 strategic plan and enshrined in the recent French law on modernisation of the economy. It accords with Caisse des Dépôts' calling and experience as a well-informed and wise investor in the service of the public interest. It also extends the mission of management of the France Investment programme entrusted to Caisse des Dépôts via its subsidiary CDC Entreprises. It should be noted that Caisse des Dépôts contributes two-thirds of the total amount of this support programme for SMEs, with a commitment of €2.2 billion over six years. The setting-up of the SIF is going to enable the commitment to businesses of the Caisse des Dépôts Group to be boosted by allocating fresh resources to it.

The SIF will be a French public limited company (*société anonyme*), a subsidiary of Caisse des Dépôts, and controlled by it, whose accounts will be consolidated with those of Caisse des Dépôts. It will be endowed, at the start, with 20 billion Euros contributed at par by Caisse des Dépôts from its equity (general section) and by the French State: 14 billion Euros in securities and 6 billion Euros in cash. It will not receive support from the Savings Funds managed separately by Caisse des Dépôts, the uses of which are fixed by law and are allocated in priority to the financing of social housing and urban policy.

The President of the French Republic set out this morning the fund's guidelines. The fund will be investing in equity in order to promote the development of businesses, whether these are small or medium-sized enterprises. It will participate in the stabilisation of the capital of certain large French enterprises. It will act as a well-informed and wise investor in the service of the public interest, with a long-term horizon, and in accordance with tailored investment policies that will draw inspiration from those of the Caisse des Dépôts Group.

Caisse des Dépôts' Chief Executive Officer will be the Chairman of the SIF's Board of Directors. The SIF will also be assisted by a policy committee, involving social partners, business leaders and economists in elaborating its main strategic aims. This committee will be chaired by Mr Jean-François Dehecq, the Chairman of Sanofi. The SIF's investment committee will be chaired by Mrs Patricia Barbizet, the chief executive officer of Artemis. Like the other subsidiaries of Caisse des Dépôts, the SIF will be carrying on its activities under the oversight of the Supervisory Board. It will be submitting to it in particular its strategic policies and its annual management report.

[...]

*Questions:*

- Will the fund operate in such a way as to constitute a restriction on foreign access to investment opportunities in France?
- The Fund's "guidelines" state that it will "participate in the stabilisation of the capital of certain large French enterprises". Can France elaborate on what is meant by this?
- The press release mentions that the Board of Directors of the Strategic Investment Fund will be assisted by a policy committee for elaborating the Fund's "main strategic aims". The Committee will include the "social partners, business leaders and economists".
  - Can France provide more information on the function of this advisory body?
  - In particular, what roles will the social partners and business leaders play?
- In a recent speech announcing the creation of the Fund (23 October 2008; see [www.elysee.fr](http://www.elysee.fr)) the French President said: "I will not be the French president who wakes up in six months to see that French industrial groups have passed into other hands".
  - What does Mr. Sarkozy mean by "other hands"?
  - Does this statement indicate the future direction of French policy?
  - If so, how does it fit with France's commitments to non-discrimination under the OECD investment instruments?
- Another article ([www.theDeal.com](http://www.theDeal.com), 8 November 2008) describes the Strategic Investment Fund's first acquisition. It agreed to buy a 33.3% stake from South Korean shipbuilder **STX Shipbuilding Co. Ltd.** and French engineering group **Alstom SA**. The deal reduces STX Shipbuilding's stake in STX France from 75% to just over 50%, while Alstom's stake falls from 25% to 16.7%.
  - Is France concerned about possible investor perceptions that, when making deals of this type with foreign investors, the government might be able to exert pressures (relating to its regulatory, law enforcement and tax powers) that could unfairly influence the terms of the deals?

## GERMANY – DRAFT INVESTMENT LAW

As discussed at the eighth Roundtable, Germany's cabinet has approved a draft amendment to the Foreign Trade and Payments Act and its implementing regulations, aiming to spell out the legal bases for government screening of new incoming investments. Currently still a draft, the proposal is available in German (online at <http://www.bmwi.de/BMWi/Navigation/Service/gesetze.did=223394.html>).

At the eighth Roundtable on 8 October 2008, Germany agreed to provide more complete answers to the questions posed by participants and in the Tour de table document. These questions are reproduced or further elaborated below.

### *Questions:*

- Could Germany offer as much detail as possible about the decision processes that the draft law would set up? In particular, how would it seek to ensure non-discrimination, transparency, proportionality and accountability in the operation of its proposed investment review mechanism as recommended in accordance with the recently-developed Freedom of Investment project's guidelines for recipient country investment policies relating to national security?
- The draft law proposes a mechanism that screens certain investments which may threaten "public order" and "public security." The draft law requires that these terms be interpreted and applied in a manner consistent with the EC Treaty and European Court of Justice jurisprudence.
  - Is the term "public security" to be analogous with "national security?" Can Germany explain what is meant by the term?
  - Could you clarify the meaning of "public order"? Would it include concepts like "economic security" or "industrial policy"?
  - What are the reasons for not limiting its review process only to national security/public security considerations and for including broader considerations implied by "public order"?
- The screening mechanism in the draft law applies to non-EEA companies, but not to EEA companies. Companies whose shares owned by non-EEA nationals represented more than 25 per cent of their voting stocks are defined as non-EEA companies, if these companies are incorporated under an EEA country's laws, including laws conforming with EU directives.
  - The first general principle of the Freedom of Investment project's guidelines for recipient country investment policies relating to national security is that "governments should be guided by the principle of non-discrimination. In general governments should rely on measures of general application which treat similarly situated investors in a similar fashion. Where such measures are deemed inadequate to protect national security, specific measures taken with respect to individual investments should be based on the specific circumstances of the individual investment which pose a risk to national security". How does Germany reconcile its discrimination between EU and non-EU investors on the basis of their

nationality with this principle? In what a non-EU controlled company incorporated under EU law similarly is not a "similarly situated investor" relative to an EU-controlled investor in regard to public order consideration for instance? Under which EC Treaty provisions does Germany justify the possibility of discriminating between EU and non-EU investors?

- Article 58 of the EC Treaty permits EU Member States to take measures which “are justified on grounds of public policy or public security.” Does Article 58 provide the legal basis for screening non-EU companies? If so, and if the draft law’s aim is generally to protect “public order and public security,” why wouldn’t Article 58 provide the same grounds for screening EU companies as well?
- How will the review procedure generate information on investments which may warrant review? Will the investor have guidelines as to whether it should file the proposed transaction with the Ministry of Economics? On the basis of which information will the Ministry decide to start an investigation?

## GERMANY – VOLKSWAGEN LAW

**Economist Intelligence Unit -- Country Report on Germany, October 9, 2008 Thursday**

*Economic policy: Volkswagen law remains contentious with EU*

On September 19th the Bundesrat (the upper house of parliament) passed an amendment to the controversial "Volkswagen" law following an earlier decision by the European Court of Justice (ECJ), which had found it to be in contravention of EU law. The government had initiated the move in early 2008 in response to a 2007 ECJ ruling which found, among other things, that the Volkswagen law was discriminatory against non-German investors, thus hindering free capital mobility in the EU. However, as the amendments passed in September do not address this issue, the European Commission has indicated that it plans bring a further case to the ECJ. Meanwhile Porsche, which wants to take over Volkswagen, increased its share to 35% in September and supports the position of the European Commission.

*Questions:*

- The article states that the "Volkswagen law", following the finding of the European Court of Justice that the law is in contravention of EU law, has been amended. It also suggests that the amendments do not address the issue of discrimination against foreigners.
  - Can Germany provide further information about the application and status of this law?
  - Over what time period does Germany plan to eliminate the discriminatory treatment against foreigners?
- The "Volkswagen law" does not appear in any of Germany's reservations or notifications under the OECD investment instruments. What is Germany's view about the appropriate treatment of this law under the instruments?

## ITALY – NATIONAL INTERESTS COMMITTEE

### Italy set to curb sovereign wealth funds

By Guy Dinmore in Rome  
Financial Times  
Monday Oct 20 2008 21:35

Italy's centre-right government opposes sovereign wealth funds buying more than 5 per cent of individual Italian companies, Franco Frattini, foreign minister, said on Monday.

Rome has set up a national interests committee to establish rules about the funds' behaviour. A 5 per cent stake ceiling would make Italy one of the more restrictive markets for sovereign wealth funds among its European competitors.

Mr Frattini was speaking to *Il Messagero*, a Rome newspaper, from the United Arab Emirates where he held talks with the Abu Dhabi Investment Authority, the emirates' largest sovereign wealth fund. He credited Giulio Tremonti, the finance minister who has been openly hostile to sovereign wealth funds, with initiating a strategic review in June to examine how to "promote investments that are useful and to prevent those that are dangerous".

The committee, Mr Frattini said, would examine which funds adhered to the Santiago principles released this month by the International Working Group on Sovereign Wealth Funds under the auspices of the International Monetary Fund.

Mr Frattini said Rome would give a seal of approval to certain funds, which included those of the UAE. He indicated that Italy was not opposed to a 4.23 per cent stake in Unicredit, Italy's second largest bank, taken by three official Libyan institutions last week.

Analysts suggested that Italy was more concerned about Chinese and Russian funds, although Silvio Berlusconi, prime minister, last week aired concern over hostile takeovers coming from oil-rich countries.

The 24 Santiago principles stress transparency, financial rather than political criteria for investments and the necessity to adhere to local regulatory requirements.

Mr Frattini said Italy welcomed funds that complied with these principles and invested for financial returns, which he defined as a holding of "basically under 5 per cent".

He said funds would be welcome in sectors such as infrastructure, transport and tourism but excluded from others, including defence.

Italy's tougher stance emerged as the finance ministry confirmed that it would keep a stake of about 30.2 per cent in Finmeccanica, the Italian defence and aerospace company, by taking up some €250m of its €1.2bn (\$1.6bn) rights issue.

Finmeccanica is raising funds for its purchase of DRS, a US defence electronics company.

Corriere della Sera, a leading daily newspaper, commented that Mr Tremonti and Mr Frattini were laying the ground to protect "Italy's family jewels", listing Finmeccanica as well as energy companies Enel and Eni.

*Questions:*

- The article notes that Italy has set up a “National Interests Committee” that is to provide rules for the behavior of sovereign wealth funds. Can Italy provide more information about this Committee?
- The article mentions the government’s plan to use of the Santiago Principles to assess SWFs. Is Italy using OECD guidance on recipient country policies toward SWFs as it develops policies for dealing with SWFs?
- Italy’s notification under the “Transparency instrument” reports that it has “no measures based on public order and essential security considerations”. It does have sectoral notifications<sup>1</sup> under the National Treatment instrument heading “Investment by established foreign-controlled enterprises”.
  - Can Italy comment on how the proposed measures would fit under the OECD investment instruments?
  - Would this be a new measure based on public order and essential security considerations or would this be implemented under Italy’s existing reservations under the Codes?

---

<sup>1</sup> Sectors are fishing, air transport and maritime transport.

## MEXICO – OIL AND GAS LEGISLATION

### Excerpts from **Hesitant Steps Over Reform Hinder Growth**

Stephen Fidler

Financial Times, 17 November 2008

...

Mr. Calderon's government managed a modest new fiscal law, which reduced dependence on oil revenues somewhat. Last month, it also passed legislation that could encourage more foreign participation in Petroleos Mexicanos (Pemex), the state-owned oil company whose sub-optimal exploitation of the country's reserves means that, unless something is done, Mexico will become a net importer of oil over the next decade.

The reform has been condemned as timid. But it has done two things. First, it breached a taboo suggesting Pemex was untouchable, easing the way for future, deeper changes... Second it allows the participation of foreign companies in the deepwater drilling on which Mexico's future as a producer depends on the basis of service contracts allowing no private equity participation.

Pemex needs the skills of the big oil companies to exploit prospective fields in the Gulf of Mexico. Analysts say the law, in principle, allows majors the freedom of operation they are likely to demand – but it remains to be seen whether the contracts that emerge will actually permit such freedom.

...

There is no doubt Mexico needs to be more competitive," says Agustin Carstens, finance minister. The country needs better infrastructure, better security and the rule of law, he says. In these areas, he claims the government is making progress.

Bruno Ferrari, head of ProMexico, the government agency for promoting investment, agrees. "Setting up a business is not as easy as we would like it to be," he says, adding that the government aims to make it easier.

### *Questions:*

- The article mentions that new legislation allows foreign companies to participate as contractors in deepwater drilling. It also suggests that this move might be a prelude to a broader opening in Mexico's upstream petroleum industry.
  - Would Mexico care to comment?
  - What are longer term plans for reform of investment-related regulations in oil and gas and in other sectors?

## THE UNITED STATES – NEW IMPLEMENTING REGULATIONS

From Summary of Final Regulations available on US Treasury Department website:  
<http://www.treas.gov/offices/international-affairs/cfius/>

### **CFIUS Reform: Final Regulations Issued on November 14, 2008**

The U.S. Treasury Department, on behalf of the Committee on Foreign Investment in the United States (CFIUS), issued final regulations governing CFIUS on November 14, 2008. The regulations implement Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (Section 721). The regulations also codify improvements to the CFIUS process informed by seventeen years of practice. Issued in proposed form on April 21, 2008, the final regulations reflect CFIUS's careful consideration of all comments received during the public comment period, as described in the discussion that precedes the regulatory text. By increasing clarity and transparency and ensuring that the CFIUS process is efficient, the regulations reinforce the United States' longstanding commitment to open investment.

#### ***Regulations Clarify What Constitutes a “Covered Transaction”:***

Only “covered transactions” are subject to CFIUS review under Section 721.

Covered transaction: Any transaction proposed or pending after August 23, 1988, by or with any foreign person, which could result in control of a U.S. business by a foreign person.

“Greenfield” investment: Greenfield, or start-up investment, is not covered.

Asset acquisition: Not a covered transaction if the assets acquired by a foreign person do not constitute a “U.S. business.”

Long-term lease: May be a covered transaction only if a foreign lessee makes substantially all business decisions concerning operation of a leased U.S. business, as if it were the owner.

Lending transaction: Not a covered transaction unless the foreign person acquires financial or governance rights characteristic of an equity investment, but not of a loan. Imminent default giving a foreign person actual control of collateral that constitutes a U.S. business is a covered transaction – but lenders in the ordinary course may qualify for an exception.

Incremental acquisition: After CFIUS concludes action on a covered transaction, the foreign person's acquisition of additional interest in a U.S. business is not a new covered transaction.

#### ***Regulations Clarify the Key Concept of “Control”:***

- Functional test: CFIUS will continue to consider all relevant facts and circumstances, rather than applying a bright-line test to determine whether a transaction results in foreign control.

*Important matters:* Expand the illustrative list of “important matters.” Control is defined as the “power, direct or indirect, whether or not exercised ... to determine, direct, or decide important matters affecting an entity.”

*Private equity:* Add examples to clarify that certain structures create ownership interests but not control, clarifying that CFIUS focuses on person’s powers, not transaction form.

*Joint ventures:* Revise treatment of joint ventures to ensure that using a JV to acquire a U.S. business is a covered transaction to the same extent as a direct acquisition.

*Passive investment:* Clarify that there is no automatic exclusion for acquisitions of ten percent or less. That rule applies only if the investor is passive, maintains that sole intent, and takes no action to the contrary.

11/14/2008 2

*Minority shareholder protections:* Identify negative rights that do not, in themselves, confer control, and provide that other rights held by minority shareholders also could be found not to confer control on a case-by-case basis.

*Influence versus control:* Add new examples and expand others to clarify the difference between “control” and mere “influence.”

*Aggregating interests:* Clarify when CFIUS, in determining control, may consider relationships or arrangements to act in concert between persons.

*Convertible voting instruments:* Identify factors CFIUS takes into account in determining whether to consider, at the time of acquisition or at a later date, the rights a foreign person will receive upon conversion of convertible voting instruments, for purposes of assessing control.

***Regulations Clarify Additional Aspects of the CFIUS Process and Ensure Efficient Review:***

*Pre-filing:* Encourage pre-filing consultations to aid parties in preparing notices and to ensure efficient reviews.

*Clear timelines:* Ensure an efficient process by requiring prompt action throughout the review process by the Staff Chair and by parties to transactions, within the context of the strict deadlines established by statute for reviews (30 days) and investigations (45 days).

*Contents of notice:* Increase transparency by requiring in a voluntary notice the types of information CFIUS requests in practice, which also aids efficient review by CFIUS.

*Confidentiality:* Explicitly extend confidential treatment to information pre-filed with CFIUS, including if no notice is ultimately filed.

*Penalties:* Set a limit on civil penalties and provide the right to petition for reconsideration of any penalty, which may be imposed upon any person who makes a material misstatement or omission in a notice filed with CFIUS, makes a false certification to CFIUS, or breaches a mitigation agreement.

*Secretary of Labor:* Define the role of the Secretary of Labor as advising on whether mitigation terms would violate U.S. employment laws.

*Critical infrastructure*: Clarify that CFIUS considers the particular assets involved in a transaction, rather than designating whole classes of assets as “critical infrastructure.”

For a link to the final regulations, as well as additional information on CFIUS see: <http://www.treas.gov/offices/international-affairs/cfius/>.

*Questions:*

- The US Treasury Department summary states the following: “CFIUS will continue to consider all relevant facts and circumstances, rather than applying a bright-line test to determine whether a transaction results in foreign control.”
  - Are there concerns that the open-ended approach to the definition of control will result in less transparency and predictability in the procedure?
  - Does the United States believe that there is a trade-off between transparency and predictability (with “bright line” tests making it easier for foreign investors to comprehend where they stand under the law) and the case-by-case approach of CFIUS (which allows policy decisions to be tailored to the circumstances of specific investment proposals)?
- The US Treasury summary states that the final regulations “Define the role of the Secretary of Labor as advising on whether mitigation terms would violate U.S. employment laws.”
  - Could the United States give more information about this potential for inconsistency between mitigation terms and US labour law?
  - Is there scope for other inconsistencies with other regulations (e.g. securities regulations, sectoral regulations)?
  - If so, how does the US government intend to handle them?
- The US Treasury website provides additional information about the way the regulations handle foreign investments in critical infrastructure. ([http://www.ustreas.gov/offices/international-affairs/cfius/docs/finalregs\\_111408%20.pdf](http://www.ustreas.gov/offices/international-affairs/cfius/docs/finalregs_111408%20.pdf)). It states that “the definition of critical infrastructure turns on the national security effects of any incapacity or destruction of the particular system or asset over which a foreign person would have control as a result of a covered transaction. Consistent with this approach, the Committee will not deem classes of systems or assets to be, or not to be, critical infrastructure.”
  - The procedure described in the text has the advantage of not imposing a CFIUS review on non-critical assets just because they are in a particular asset class. A possible disadvantage is that it might be less clear to foreign investors whether their investment projects are subject to a review. How would you suggest that foreign investors handle this? Could they read the US strategy for critical infrastructure protection to try to understand how their investment proposal fits (or does not) with the broader strategy?

**FOREIGN INVESTMENT POLICIES IN THE CONTEXT OF THE FINANCIAL CRISIS**

## UNITED KINGDOM

Excerpt from UK Treasury Press Notice 100/08 (bold added)

08 October 2008

### **Financial support to the banking industry**

After consultation with the Bank of England and the Financial Services Authority, the Government announces that it is bringing forward specific and comprehensive measures to ensure the stability of the financial system and to protect ordinary savers, depositors, businesses and borrowers.

In summary the proposals announced today are intended to:

- Provide sufficient liquidity in the short term;
- Make available new capital to UK banks and building societies to strengthen their resources permitting them to restructure their finances, while maintaining their support for the real economy; and
- Ensure that the banking system has the funds necessary to maintain lending in the medium term.

In these extraordinary market conditions, the Bank of England will take all actions necessary to ensure that the banking system has access to sufficient liquidity. In its provision of short term liquidity the Bank will extend and widen its facilities in whatever way is necessary to ensure the stability of the system. At least £200 billion will be made available to banks under the Special Liquidity Scheme. Until markets stabilise, the Bank will continue to conduct auctions to lend sterling for three months, and also US dollars for one week, against extended collateral. It will review the size and frequency of those operations as necessary. Bank debt that is guaranteed under the Government's guarantee scheme will be eligible in all of the Bank's extended-collateral operations. The Bank next week will bring forward its plans for a permanent regime underpinning banking system liquidity, including a Discount Window facility. In addition the Government is establishing a facility, which will make available Tier 1 capital in appropriate form (expected to be preference shares or PIBS) to "eligible institutions". **Eligible institutions are UK incorporated banks (including UK subsidiaries of foreign institutions) which have a substantial business in the UK and building societies. However applications are invited for inclusion as an eligible institution from any other UK incorporated bank (including UK subsidiaries of foreign institutions). In reviewing these applications the Government will give due regard to an institution's role in the UK banking system and the overall economy.**

[.....]

*Questions:*

- Would the UK care to comment on this description of UK policy and in particular about the inclusion of UK subsidiaries of foreign institutions in the list of institutions that are eligible to receive UK government-provided Tier 1 capital? In practice, have subsidiaries of foreign institutions benefited from such capital injections? Are domestic political constituencies concerned about this?
- Do countries participating in the Roundtable agree that emergency measures taken in response to the financial crisis should adhere, whenever possible, to the principle of non-discrimination? What problems, if any, do they see in adopting non-discriminatory approaches to policy?

## MIDDLE EAST SOVEREIGN WEALTH FUNDS

Excerpt from **Sovereign wealth funds switch from Western investments**  
The Times of London  
November 26, 2008

Sovereign wealth funds in the Gulf are switching their focus away from Western stock markets to shore up ailing economies in the Middle East and protect themselves from losses in the City and on Wall Street.

Investment funds in Kuwait, Qatar, Dubai and Abu Dhabi are understood to be changing their investment strategies after losing billions of dollars buying shares in Western companies. Several Gulf-based banks are being propped up with state investment. Local stock markets have collapsed and some funds are shifting their assets into local shares in an attempt to inject confidence.

The Kuwait Investment Authority (KIA) has shifted \$4 billion (£2.6 billion) from Western markets into its own bourse and the Qatar Investment Authority has begun a bailout of local banks. Dubai International Capital (DIC) is concentrating on emerging markets and rumours have spread that the Abu Dhabi Investment Authority, a \$700 billion oil fund, is retreating to local markets.

Sovereign wealth funds are among the few sources of liquid capital available worldwide and many companies have sought cash injections from the Middle East. However, investments in banks such as Citigroup and Merrill Lynch have cost the funds dearly and regional bankers are said to feel that they were lured into investing before the full extent of the crisis was known. The KIA, which has assets estimated at \$250 billion, said two months ago that it had lost \$270 million on a \$3 billion investment in Citigroup, which was made at the beginning of this year. Citigroup's share price has fallen by two thirds since that announcement and now the bank is being supported by the US Government.

The ruling families of Qatar and Abu Dhabi agreed last month to inject £6 billion into Barclays, giving the Gulf-based investors a 30 per cent stake. However, this sort of bailout may become more difficult as funds are diverted to the Middle East.

A refocusing by the funds on local and emerging markets is worrying for Western politicians. Gordon Brown visited Saudi Arabia, Qatar and Abu Dhabi this month to encourage sovereign funds to invest in British businesses and also support international institutions such as the International Monetary Fund and World Bank in an attempt to limit the economic downturn.

### *Questions:*

- This story states that the UK government is actively seeking investments from SWF (and other investors) from the Middle East. It also suggests that these SWFs may be drawing back from investments in Western countries because such investments have not (at least so far) been good investments and the funds are directing investments toward their own local markets or towards emerging markets that also have unmet needs for investment funds.

- Can participating countries confirm this characterization of the investment stance of Middle East SWFs?
- How will stronger competition for SWF investments affect the “political economy” of their follow up on the *Santiago Principles*? Will recipient countries place more emphasis on competing successfully for foreign investments and less on governance and transparency considerations? Will competition among recipient countries weaken political incentives for SWFs to follow up on the *Principles*?
- How will competition among recipient countries affect the political economy of follow up on the OECD guidance on recipient country policies toward SWFs? Does competition among recipient countries for SWF investments make it easier for them to respect the principles of openness and non-discrimination that are promoted in this guidance?

## ANSWERS TO QUESTIONS POSED AT EARLIER ROUNDTABLES

### INDIA

This refers to your mail addressed to Secretary Shankar on 24th October 2008 enclosing the letter from Mr. Schekulin, the Investment Committee Chair concerning questions directed to India in the *Tour d'horizon* document discussed at the 8th Freedom of Investment Roundtable held in Paris on October 8.

I am directed to communicate the following comments of the Government of India as response to the said communication:

"Security is a growing concern in today's world and it is incumbent on every country to initiate measures to ensure continued security to its citizens. The Government of India undertakes periodical reviews of its policy on foreign investment for the purposes of liberalization, as also for addressing issues relating inter-alia to social, health, environment and security concerns. Such policy reviews constitute an ongoing process and aim to create an investor-friendly policy regime, which balances liberalization with the emerging social, health and security concerns facing the country."

Statement made in November 27 e-mail from

Mrs. Pramila Raghavendran  
Under Secretary  
DIPP  
Telefax: 011-23062327

*Questions posed to India at eighth Roundtable based on **Economic Times** article:*

*FDI in sensitive sectors may go off auto route  
The Economic Times 7 Aug, 2008, 1520 hrs IST  
Deepshikha Sikarwar & G Ganapathy Subramaniam, ET Bureau*

NEW DELHI: Flow of foreign direct investment (FDI) into sensitive infrastructure sectors such as airports and ports may be taken off from the automatic route once the proposed umbrella law for scrutinising FDI from the national security angle is put in place.

The home ministry has suggested that clearance for FDI in such projects should be provided only after thorough verification under the proposed National Security Exception Act. It has asked finance ministry to identify such sensitive sectors which are on automatic route. As of now, FDI in airports is allowed to the tune of 100% through the automatic route in case of green-field projects. In case of ports, 100% FDI is allowed through the automatic route.

The move is significant since FDI has flown into the new international airports at Bangalore and Hyderabad as well as the companies managing two of the busiest international airports in the country –

Delhi International Airport and Mumbai International Airport. In case of existing airports, FDI up to 74% is allowed on the automatic route.

The proposed law would work on the lines of the Exxon-Florio provision in the US, implemented by the Committee of Foreign Investment. This provision enables US authorities to stall foreign companies from acquiring any local asset if it is seen to be compromising national security. National Security Advisor M K Narayanan is working on legislation with this objective, but the initiative has been delayed due to resistance from various ministries.

However, policy makers have now begun a review of their stand in view of increasing security apprehensions. Concerns with regard to these sectors is not so much about building the infrastructure but about its operation as also inflow of capital from tax havens like Cayman islands, Cyprus and Mauritius. These largely stem from the fact that some of these sectors are on the automatic route and thus the proposals are not vetted by ministries concerned.

The finance ministry has been against such law as it maintains that existing laws have adequate provisions to deal with such concerns. It is of the view that instead of bringing in an altogether new law, it would be preferable to strengthen existing laws. The department of industrial policy & promotion is also wary of new provisions restricting FDI flows, but the ministries of home and defence are keen to put a fool-proof system in place. Security agencies are also in favour of strong checks to prevent national security from being breached.

*Question:*

- Can India provide more information on the proposed law? In particular, what national security concerns will it address and how would such legislation complement existing safeguards?