# Contents

*Foreword*  Franco Bassanini  viii

## PART I  SWFS: NEW ACTORS IN THE INTERNATIONAL SCENE. A DEFINITION AND CLASSIFICATION

1  Sovereign entities investing abroad as private entities: limits of the conventional framework  3  
1.  State investors between public and private, national and international law  3  
2.  Specific issues raised by SWFs  5  
   2.1  The recent and quick growth of the phenomenon: a review of causes and consequences  6  
   2.2  Issues brought by recent developments  10  
3.  Rationale and objectives of this work  14  

2  SWFs: definition and classification  17  
1.  The definitions in literature  17  
   1.1  Functional definitions  18  
   1.2  The differences between SOEs and SWFs  21  
   1.3  The ‘five pillars’ definition  23  
   1.4  The definitions misconception (definition by classification)  24  
2.  The definition in the International Organisations’ practice  26  
   2.1  The IMF and OECD definitions  26  
   2.2  The limits of IMF definition and classification  29  
   2.3  The consequences of the lack of a shared notion  30  
3.  The definition and classification suggested  31  
   3.1  Our proposed definition  31  
   3.2  The resulting classification  32  

## PART II  SWFS’ NATIONAL AND INTERNATIONAL REGULATION

3  Sovereign wealth funds’ regulation  39  
1.  The proposals found in literature  40
1.1 The ‘book of rules’ model 41
1.2 The ‘double constraint’ theory 43
1.3 The temporary suspension of voting rights and other related measures 44

2. The IMF guidelines (‘Santiago GAPPs’) 46
2.1 GAPP assumptions and their limits 46
2.2 The classification by regulatory/institutional framework and by investment activity 48
2.3 The limits of Santiago GAPPs’ classification 50

3. A proposal to transform conduct codes into measures binding on host and home states 52
3.1 At domestic level: host states’ restrictive measures applicable only to SWFs not complying with GAPPs 53
3.2 At international level: the guidelines as a benchmark in bilateral investment treaties 54

4 Host states’ laws and SWFs 55
1. The governing law: obligations of host states 55
1.1 In WTO treaties 56
1.2 In OECD regulations 59
1.3 In EU laws 60
2. Exemptions from host states’ obligations 61
2.1 In WTO treaties 61
2.2 In OECD regulations 62
2.3 In EU law and practice 64
2.4 Exemptions applied by host states: preventive and repressive measures 68
3. Little efficacy of the measures adopted at multilateral and national level 76
3.1 Soft law and international protection of SWFs investment 76
3.2 Host state measures, law and practice 78
4. The challenging task SWFs must carry out, and some proposals to simplify it 83

PART III SWFS’ PROTECTION IN BILATERAL RELATIONS

5 SWFs and state immunity 89
1. In search of a direct relationship 89
2. ‘Passive’ and ‘active’ immunity: host state and SWF actions relevant for applying state immunity 91
2.1 Host state actions that might be challenged by an SWF under the profile of state immunity 91
## Contents

2.2 SWF actions and assets that might be protected by state immunity 92

3. Immunity from jurisdiction and immunity from execution 92
   3.1 Immunity from jurisdiction 93
   3.2 Immunity from execution 96

4. Application of state immunity to SWFs 99
   4.1 Attribution to a state of the activities and ownership of SWF assets for immunity purposes 99
   4.2 The ‘tax exemption’ factor 106
   4.3 SWFs, state immunity and competition law: the need to overcome a misunderstanding 109
   4.4 SWF models and immunity: a five-step analysis 111
   4.5 Conclusions 114

6 SWFs and bilateral investment treaties 116
   1. An undiscovered relationship 116
   2. Bilateral investment treaties and their relevance for SWF investments 124
      2.1 Theoretical analysis 124
      2.2 SWFs’ home states’ practice 126
   3. The main BIT models. Assessment of their efficacy with respect to SWF investments 132
      3.1 Existing models 133
      3.2 Renegotiation under way 137
      3.3 The efficacy of existing models in protecting SWF investments 142
   4. Final remarks 149

7 Conclusions 151
   1. Conclusions 151

Bibliography 157

Index 169