

Client Bulletin

Private Equity Practice



Wildman Harrold
Attorneys and Counselors

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Illinois Private Equity Funds Applaud Ruling: Illinois Sudan Act Ruled Unconstitutional

On February 23, The Honorable Matthew F. Kennelly of the U.S. District Court of the Northern District of Illinois found the Illinois Act to End Atrocities and Terrorism in the Sudan (the “Sudan Act”) unconstitutional and has permanently enjoined the State of Illinois from enforcing the Sudan Act.

The Sudan Act, codified at 40 ILCS 5/1-110.5 et seq, became effective January 27, 2006 and forbid companies and financial institutions from investing directly or indirectly in the Republic of the Sudan. It required any fund with an investment from an Illinois pension fund to be fully divested from the Republic of the Sudan by July 27, 2007. Fund managers of funds with Illinois pension fund investments would have been required to certify to the pension funds that the fund had not invested in the Republic of the Sudan since January 27, 2006, had divested at least 60 percent of the pension fund’s assets from the Republic of the Sudan by January 27, 2007, and had divested 100 percent of the pension fund’s assets from the Republic of the Sudan by July 27, 2007. These requirements would have placed additional certification requirements on fund managers to receive affidavits from their portfolio companies regarding the certification requirements.

The National Foreign Trade Council (“NFTC”), along with several boards of trustees of several state pension funds, filed a lawsuit against Judy Baar Topinka – former Illinois State Treasurer, Lisa Madigan – Illinois

State Attorney General, and Dean Martinez – former Secretary of the Illinois Department of Financial and Professional Regulation on August 7, 2006, challenging the Sudan Act—arguing that the Sudan Act had resulted in continuing injury to pension funds due to its “arduous and poorly-defined certification process” and further arguing that the Sudan Act conducts foreign affairs in violation of the U.S. Constitution, including the Foreign Commerce Clause and the Supremacy Clause. Judge Kennelly found in favor of the NFTC that the Sudan Act violated the federal constitution.

Specifically, Judge Kennelly found that the Sudan Act interfered with the federal government’s power to conduct foreign affairs, was preempted by federal laws regarding the Republic of the Sudan, and violated the Foreign Commerce Clause under the federal constitution. As such, the court permanently enjoined the State of Illinois from enforcing the Sudan Act. At this time, it is not certain if the State of Illinois will appeal or attempt to pass new legislation.

The Private Equity Practice at Wildman Harrold is dedicated to keeping our clients advised of new legislative and judicial developments as they occur. If you have any questions regarding these issues, please feel free to contact your primary attorney at Wildman Harrold or email us at sudan-act@wildmanharrold.com for further information.

Client Bulletin

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