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In the mid-twentieth century, the Arab world witnessed the first sovereign wealth funds experience, when Kuwait established the first sovereign wealth fund (SWF) in February 1953 "with a mandate to invest surplus oil revenue and reduce Kuwait's reliance on a single finite resource" under the name of the Kuwait Investment Board (KIB), and then the establishment of other sovereign wealth funds in other countries, currently exceeding a hundred boxes.

The main idea of sovereign wealth funds is to invest surpluses, manage them well and not squander them, with the aim of saving them for future generations. In fact, this is more in line with the oil-rich countries or the industrialized countries whose financial potential and large assets to a greater extent exceed their need for the well-being and decent living of their people.

As for the Egyptian sovereign fund, until this moment, it depends on either funds transferred to it from the state budget despite its growing debts, or from the proceeds of liquidating some state-owned assets and removing the attribute of public benefit from them to enable the fund to dispose of them by selling or investing -which makes it different from the idea of relying on surpluses.

The IMF has identified five types of SWFs based on their main objective, according to the IMF bulletin, as follows:

1- Stabilization funds, where the primary objective is to insulate the budget and the economy against commodity (usually oil) price swings;

2- Savings funds for future generations, which aim to convert nonrenewable assets into a more diversified portfolio of assets;

3- Reserve investment corporations, whose assets are often still counted as reserve assets, and are established to increase the return on reserves;

4- Development funds, which typically help fund socioeconomic projects or promote industrial policies that might raise a country's potential output growth; and

5- Contingent pension reserve funds, which provide (from sources other than individual pension contributions) for contingent unspecified pension liabilities on the government's balance sheet.

The Sovereign Wealth Funds Institute (SWFI) defines the Sovereign Wealth Fund (SWF) as a state-owned investment fund or entity that is commonly established from: balance of payments surpluses, official foreign currency operations, the proceeds of privatizations, governmental transfer payments, fiscal surpluses, and/or receipts resulting from resource exports.

Within the framework of these considerations, this paper seeks to address the main problematics of the legislative system related to the Egyptian sovereign fund and the impact of these problematics on the purposes specified by law for the establishment of the fund, including maximization of the assets and funds handed over to it in favor of future generations. The paper also explores how far these problematics may lead to squandering the assets and funds transferred to the Egyptian sovereign fund instead of preserving them.

Legislation related to Egypt's sovereign fund

The Egyptian sovereign wealth fund (Egypt Fund) was established by Law No. 177 of 2018, known in the media as "Tharaa", before the fund's name was later changed [According to Law No. 197 of 2020, "Tharaa" was changed into "The Sovereign Fund of Egypt for Investment and Development" (TSFE)], with the objective of attracting private investments in Egypt's underutilized assets to unlock value and create wealth for future generations, and contribute to the growth of Egypt's economy...

Then, the Prime Minister issued Decree No. 555 of 2019 on the statute of the TSFE.

In September 2020, the TSFE board of directors established four sub-funds:

1- TSFE Infrastructure and Utilities Sub-Fund

2- TSFE Healthcare and Pharmaceuticals Sub-Fund

3- TSFE Tourism, Real Estate and Antiquities Sub-Fund

4- TSFE Financial Services and Fintech Sub-Fund

An amendment was issued to the sovereign fund law via Law No. 197 of 2020, which included changing the name of the fund to "The Sovereign Fund of Egypt for Investment and Development" among other amendments.

Under the law, the fund is privately managed, with an independent legal personality and enjoys financial independence as well as administrative and financial status independent of the state.

Accordingly, the TSFE's funds despite being state-owned funds yet they are considered private property, not public funds. The law stipulated that the TSFE shall not be bound by government rules and regulations, and it shall constitute a board of directors and a general assembly based on a decree from the president of the republic, where the board of directors shall appoint an executive manager to represent the TSFE before courts and third parties.

The law determined the main purpose of establishing the TSFE, to achieve optimal use of the funds and assets entrusted to the fund to manage to maximize their value "for the benefit of future generations". However, the law's procedures and controls with respect to the fund greatly contradict this purpose and its requirements. Therefore, this paper will attempt to refute this through ten legislative problematics related to The Sovereign Fund of Egypt for Investment and Development (TSFE).

The first problematic: The fund and its sub-funds are private law persons

According to Article 14 of the law, "the fund, its sub-funds, and the companies it shall establish or co-share its establishment are all considered private law persons..." Therefore, the TSFE becomes to a large extent similar to private companies that are subject to the controls and laws of private civil, commercial and investment laws, which means that the fund loses the legal immunity granted to public state funds that prevents confiscation, seizure, or owning by statute of limitations, and consequently absence of mechanisms of the oversight of public funds, that is it is not bound by government rules and regulations, as Article 14 of the law states.

This flexible legal nature may make the fund's money and property vulnerable to loss according to the rules of speculation, supply and demand, which basically contradicts the purpose of establishing the fund with respect to preservation of its money and assets and maximization of their value (for the benefit of future generations).

The second problematic: Formation of the Fund's leadership boards

The law exclusively grants the President of the Republic the right to form leadership boards, where he is the only one that can appoint both the Board of Directors and the General Assembly, which is a big problematic. The Board of Directors manages the Fund, being considered as the owner of its money and assets; and the General Assembly is concerned with assessment of its performance and reviewing its decisions. In fact, granting the President of the Republic the exclusive right to appoint both the Board of Directors and the General Assembly is considered infringement on the elected control councils.

The third problematic: Absence of oversight and accountability mechanisms

The Fund's law and statute are devoid of any reference to parliamentary oversight. With regard to the (amended) Article 11, stipulating that: "A copy of the fund's annual financial statements shall be sent to the Speaker of the House of Representatives within three months of the end of the fiscal year", such process is not considered putting the fund's annual financial statements under parliamentary oversight. The Article refers to only sending the financial statements to the Speaker of the House of Representatives, in what may look like a kind of moral obligation that shall not entail action, as it is devoid of any mention of summoning officials for discussion as well as accountability.

The law has also excluded the oversight of the Central Auditing Organization (CAO), as the fund is a private entity, and its funds are not public funds. The law was not satisfied with this implicit exclusion, but explicitly affirmed the Fund's non-compliance with government rules and regulations. As for Article 11 which stipulated that two auditors, including one of them from the Central Auditing Organization, shall audit the fund's accounts, this does not reflect the control established in accordance with the law founding the CAO, which enables it to (examine) documents, (inspect) records, (submit remarks) and (obligate) various authorities to respond to them (remarks). According to the sovereign fund law, the role of the CAO auditor is only limited to a narrow margin of review (not oversight or control) on the annual financial statements, where these statements are presented to the General Assembly of the Fund within the reports of the Fund's activity and investment plan. Anyway, these financial statements are not presented to the General Assembly except after the approval of the Board of Directors and the ratification of the General Assembly, which means that the report that is submitted to the President of the Republic or sent to the Speaker of Parliament is not the report of the CAO

auditor, but rather the report of the General Assembly after discussion and approval without any kind of condemnation, as the law obliged the General Assembly to absolve members of the Board of Directors with respect to the ended fiscal year.

According to the law, the audit assigned by the Central Auditing Organization does not participate in controlling or auditing the accounts of sub-funds (despite the fact that they are the actual vessels of money of the sovereign fund). And according to what was stated in the law statute within the provisions related to the control of sub-funds, if the results of examining the reports of those funds included grave violations that may threaten the stability of the fund's conditions, the board of directors may take one of a set of procedures, including sending a warning to the sub-fund, calling for a meeting of its board of directors, suspending the activity of the sub-fund for thirty days and determining the actions to be taken during the suspension period - without any indication that such serious violations shall be referred to the Public Prosecution or the Administrative Prosecution or any administrative, parliamentary or even independent investigation body.

The fourth problematic: immunizing the Fund's decisions from litigation

The President of the Republic may transfer the ownership of any exploited or unexploited state assets to the ownership of the Fund, where he, certainly, has full authority to issue decrees to remove the public benefit attribute from these assets. However, the transferred asset may be of such importance that the characteristic of public benefit should not be removed from them, and accordingly their transfer to the possession of the fund which does not have sufficient controls to preserve state property. in addition, there is a possibility of misusing the absolute power granted to the President of the Republic, which requires, according to the Constitution and the rules of transparency recognized in political systems, that these decisions should not be immune from appeal by citizens. However, the law restricted the right to appeal against the President's decision to transfer assets to the fund to the parties to the disposal, that is the party that owns the asset or the fund to which the ownership is transferred, which represents a clear constitutional violation.

Perhaps this is in order to avoid any counteraction of the type of procedures previously taken by the State Council regarding the Sisi's waiver of the islands of Tiran and Sanafir to Saudi Arabis, which had embarrassed the regime.

The fifth problematic: The absolute powers of the board of directors

Although it is natural for the board of directors in any independent legal institution to have broad and flexible powers to enable it to perform its duties, however, there should be, at the same time, reasonable limits stated in the law founding it, in addition to adherence to a set of general laws that govern the financial and contractual frameworks that all state financial institutions are bound by, which are absent in the case of the sovereign fund.

According to the law, the Board of Directors, in addition to sale, can mortgage any of the Fund's assets as a guarantee to finance its projects. It is also entitled to approve reconciliation and settlement contracts and arbitration agreements, which are competencies that should not be combined in any way in the hands of one party.

The sixth problematic: Freedom of disposal of assets

According to the competence of these funds, they can sell, buy and invest in all forms, as they aim to increase their balances and raise their financial solvency and earnings, and as they had originally depended on investing cash liquidity that represents surpluses of state budgets coming, for example, from selling oil or pension and retirement funds. However, with regard to The Sovereign Fund of Egypt for Investment and Development (TSFE), the situation is somewhat different, as it mainly relies on the transfer of the state's exploited and untapped assets to its ownership, how can it be absolutely authorized to sell without legal control, especially that the assets transferred to its ownership by the President of the Republic after removing the attribute of public benefit from them reinforces such apprehension? These presidential decrees included historical state assets such as the headquarters of the Ministry of Interior and the iconic Tahrir Square administrative building as well as other assets of high value being located in distinctive sites such as the former headquarters of the National Democratic Party (the ruling party during the Mubarak era) and the Nasser Institute building. The unconditional sale or lease ending with ownership of such assets may cause a deviation from the fund's purposes.

The seventh problematic: Expansion of borrowing and issuance of bonds

The policies adopting expansion of borrowing contradicts the main purpose of the fund, which is to invest in favor of the future generations! The idea of issuance of bonds also contradicts the objective

of the fund, as it provides property rights that may enable the holder of the instrument or bond to seize the assets guaranteeing the debt repayment.

The eighth problematic: Absence of mechanisms to control foreign investment

The law granted the fund system freedom to determine investment opportunities, methods of promotion, marketing and investment attraction without placing any controls to protect the country's strategic potentials, banning certain areas of foreign investment, or setting safe percentages for this investment, such as requiring that the foreign capital must be less than 50%.

The ninth problematic: Overlapping functions of the Fund's governing bodies

The fund has more than one administrative body according to the law (Law No. 177 of 2018) and statute, including:

A) Administrative bodies stated in the law or the fund's articles of association:

1- The General Assembly: It is the highest authority in The Sovereign Fund of Egypt for Investment and Development (TSFE), chaired by the Prime Minister, with a number of ministers and senior state officials, as well as a number of experts in several fields, as members whose tasks revolve around follow-up, assessment and accreditation.

2- The Board of Directors: which comes at the second level after the General Assembly and is concerned with the tasks of setting the vision, strategies, and policies, monitoring performance, forming committees, and approving investment plans.

3- The chief executive officer (CEO): who represents the Fund in its relations with others and also before the judiciary. He is concerned with proposing and implementing plans and budgets after approval of the Board of Directors. He prepares work plans and performance indicators, appoints employees, contracts with employees, and concludes agreements and contracts, in accordance with the powers granted to him by the Board of Directors.

B) Entities not mentioned in the law or statute:

The Supreme Executive Committee: where this committee was included in the statute of the TSFE Financial Services and Fintech Sub-Fund, defined as the TSFE founding committee pursuant to the decision of the TSFE Chief Executive Officer (CEO) in May 2020.

Examples of the overlapping functions of the Fund's governing bodies

1- The TSFE board of directors performs, in addition to its mission, the tasks of the general assembly with regard to sub-funds, and thus it confuses the tasks of monitoring and follow-up as a general assembly and the tasks of setting policies and adopting the vision as a board of directors.

2- With regard to sub-funds, the Higher Executive Committee has greater powers than the general assembly of the sub-fund, despite being a committee appointed by the CEO who is, in turn, appointed by the TSFE Board of Directors, which represents the general assembly of these funds, leading to a significant overlap in tasks.

The tenth problematic: Mechanism of dissolution and liquidation

The law did not stipulate the mechanism of dissolution and liquidation of the fund despite its significance, as it merely referred it to the statute for defining the mechanisms for dissolving and liquidating the fund. In turn, the statute granted the right to propose the fund dissolution or liquidation to the general assembly, distinguishing between the liquidation of sub-funds and the main sovereign fund.

1) TSFE Dissolution and Liquidation

Chapter Eleven of the Articles of Association of The Sovereign Fund of Egypt for Investment and Development (TSFE) placed a sub-heading titled: "Dissolution Due to Massive Losses", which determined a single reason for dissolution of the fund, that is "massive losses" as defined by the law - when losses reach 50% of the fund's capital, where the administration invites the general assembly to consider the continuation or dissolution of the fund.

The law or the statute did not mention any reference to the nature of these massive losses, or the procedures against those who caused them, or referring them to the regulatory bodies or the Public Prosecution.

2) Dissolution of sub-funds

According to the TSFE statute, the sub-fund expires in three cases: the expiry of its term without renewal, the fulfillment of the purpose for which it was established, or facing circumstances that prevent it from carrying out its activity. Thus, the TSFE statute referred the controls and procedures for liquidation to the sub-fund itself.

According to the statute of the TSFE Financial Services and Fintech Sub-Fund, the powers to make a decision to liquidate the fund or extend its term were granted to the general assembly (the board of directors of the main sovereign fund), which may provide a cover for administrative corruption.

Conclusion

Based on these problematics, we are in front of a system of funds with absolute powers, not bound by any constitutional oversight from Parliament, the judiciary, or oversight bodies, nor are they subject to the state's normal governmental regulations, as it is governed only by its own founding law that lacks the necessary controls for such important financial entities. TSFE is immune from litigation in a way that prevents the stakeholder citizen or the regulatory and judicial authorities from filing appeals or lawsuits against its deals. In addition to the right of sale and absolute disposal, TSFE and its sub-funds have the right to borrow, lend, mortgage, speculate, issue bonds, sell shares and enter into companies. Moreover, TSFE alone has the right to dissolve and liquidate itself or its sub-funds without any accountability or ensuring recovery of the wasted assets, and without arranging penalties of any kind on those responsible for squandering the money of TSFE or that of its sub-funds. Rather, TSFE, through purely administrative procedures, absolves officials from responsibility after each fiscal year! All this leads to questioning the credibility of the stated primary purpose of establishment of the fund: that is, maximizing the value of assets for the benefit of future generations.