ASSESSING THE ABILITY OF THE FINANCE LEGISLATIVE FRAMEWORK TO PROPERLY GOVERN UGANDA'S OIL PETROLEUM FUND.

KYARIMPA HENRY

REG.NO: M21M23/15

A DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAWS OF OIL AND GAS AT THE INSTITUTE OF PETROLEUM STUDIES KAMPALA IN AFFLIATION TO UCU.

DECEMBER, 2022

DECLARATION

I, Kyarimpa Henry, do hereby declare that this thesis is entirely my original work and has never been submitted to any other university or any other institution of higher learning for any academic award.

Name: **Kyarimpa Henry**

Signature: **……………………………**

Date: **……………………………**

APPROVAL

This is to certify that this thesis, Titled "Assessing the ability of the finance legislative framework to properly govern Uganda's Oil Petroleum Fund," has been under my supervision and it is now ready for submission.

Name: ……………………………

Signature: ……………………………..

Date: ……………………………..

DEDICATION

This Thesis is first and foremost dedicated to the Lord God, the the most merciful, the most precious Almighty, who against all odds has made me reach this far with unprecedented love care and provision. To my family and Friends especially my dear Wife Martha Isabella Kyarimpa and Brig Gen (rtd) Jacob Asiimwe who have been very supportive and sources of inspiration. To the entire leadership of my second family, the then NRA now UPDF led by our great visionary revolutionary Commander and Commander in Chief of the Armed forces, His Excellency the President of the Republic of Uganda General Y.K Museveni without whose decision to send back to school all the young 1986 revolution armed NRA freedom fighters (Kadogos), I would not have reached this far in the academia World.

To my now deceased friends turned family who came in whenever I was at the Verge of despair. The late col. Walter Ochola, the late Hon. Ali Gabe Akida, the late Boniface Ebiu, the Late father Daniel Ssemyalo, the late Wilson Kwarisiima, the late Henry Williams Twinomuhwezi Kashanku , the late Mwesigye Mwene Kahima and finally, my late father the late Dr. Felix Rwandutsya and my late grandmother the late Teona Kishemeire.

May their Souls rest in Eternal Peace.

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ABSTRACT

This thesis discussed how legislative institutions that are used to oversee the production, exploitation and management of the Oil and Gas as a natural resource affects the economic growth of Uganda. The thesis essentially examined the governance practices in the exploitation of the Oil and Gas resource in Uganda and considered what the likely impact on Uganda's economic growth would be. The thesis tried to interrogate the effectiveness and ability of Uganda's institutions in managing the Oil and Gas sector and how this governance impacted on the overarching goal of realizing sustainable development in Uganda. The thesis provided evidence to suggest that there was an attempt to embrace the principles of good resource management although not transparent and holistic enough. The thesis argued that although Uganda's institutions are well intended and enshrined in different petroleum legislations, they still faced critical challenges that hinder effective management of the resource.

The thesis asserted that the challenge for Uganda is arguably not the technical approaches to managing oil revenues but rather the political economy context in which they are implemented or managed. Evidently, although the sector is still in its infancy, a lot more needs to be done.

For example, the government needed to capture the synergies necessary for a robust and aligned management that will deliver positive results for the country. The thesis recommends that the Government should revise the national oil policy, enact enabling laws and create an environment for transparency and accountability in order to achieve good resource management for the oil and gas.

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CHAPTER ONE

BACKGROUND OF THE STUDY

1.1 Introduction

Non-renewable resources dominate nearly one quarter of the world's economies. Over half of these economies are developing, with many in Africa. Managing resource revenues is one of the most pressing challenges facing policy makers in Africa. For over a decade, these countries have been advised to follow 'the Norwegian model', saving resource revenues abroad, in offshore sovereign wealth funds for future generations.[1]

It is argued that there are three key motives for saving revenues abroad: intergenerational transfer, parking and stabilisation, and that only the second two are relevant for developing countries, which have pressing needs at home, arguing that revenues should be directed toward domestic investment to accelerate the countries along their development path.[2]

There are, however, other potential motives for investing resource rents offshore, in addition to intergenerational transfer, parking and stabilisation. These include political accountability, portfolio diversefication of investment returns and Dutch disease considerations. Investment of resource rents in the domestic economy should be focused on projects with high social and financial returns, and is best achieved by collaboration between informed development banks and arms-length institutional investors.[3]

Sovereign wealth Funds (SWFs) are defined as special purpose investment arrangements, owned by the general government for macroeconomic purposes. Sovereign Wealth Funds hold, manage, or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets.

Sovereign Wealth funds are also defined as a type of government-owned or government-controlled investment assets, managed directly by their governments or indirectly by independent management teams, appointed by the government. The main sources of these Sovereign Wealth funds include current account surpluses, official foreign exchange reserves,

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[1] S E. Wills, L.W. Senbet, and W. Simbanegavi, "Sovereign Wealth Funds and Natural Resource Management in Africa," *Journal of African Economies, 2016, Vol. 25, AERC Supplement 2, pp. ii3–ii19.*
[2] Ibid.
[3] Ibid.

fiaty surpluses, receipts from commodity exports or proceeds of privatisation. Some SWFs have been in operation for about 60 years, while many have been established in the past decade.[4]

They are generally considered separate from pension funds,[5] road fund and consolidated fund for the case of Uganda. While SWFs have been around since the 1950s, they have only recently gained widespread attention following numerous well-publicized acquisitions during the beginning stages of the global financial crisis.[6] Surprisingly, little is known about this increasingly important group which controls roughly $4 trillion globally with no international body to oversee SWF investment. As a result, exact holdings for many SWFs remain unknown.[7]

The growing in size and number has drawn the attention of many government officials because of their non-transparent nature and expansionary investment policies. Their government-controlled status and non-transparent nature have raised fears among governments of political rather than economic investment motivations.[8] It is suspected that they may use their economic influence to obtain critical information, transfer jobs abroad, or compromise the operation of strategically important companies. Such concerns have led to proposals for national measures to regulate investments of foreign SWFs with a view to controlling their economic and security impact.[9]

1.2 Background of the study

Uganda has established and managed other funds for various programmes prior to the establishment of the SWF which is unique in many ways. The major characteristic of most of these funds is that they are either funded from the government Consolidated Fund which is itself limited or is donor dependent. Some of the Funds are mostly for consumption purposes, that is, the money collected is utilized as it is collected. The Funds are established for a specific purpose for which they are utilized. Some of the funds include the Consolidated Fund, the Global Fund, the Uganda Road Fund, The Uganda Cancer Fund, Uganda

[4] X Yi-chong (2012) Sovereign wealth funds: the good, the bad or the ugly? *Journal of the Asia Pacific Economy, 17:2, 193-207,* DOI: 10.1080/13547860.2012.668021.
[5] Mauck N (2012) How Does Sovereign Wealth Fund Investment Impact the Stock Market? *J Stock Forex Trad* 1:e114. doi:10.4172/2168-9458.1000e114.
[6] Ibid.
[7] Ibid.
[8] G Kratsas and J Truby, "Regulating Sovereign Wealth Funds to Avoid Investment Protectionism, *Journal of Financial Regulation," 2015, Vol. 1, No. 1, Pp 95–13.*
[9] Ibid.

Biodiversity Fund, Wildlife Fund, Forest Fund, Operation Wealth Creation Fund, National Social Security Fund, Veterans Fund, among others.

The Biodiversity Fund, like the SWF has consideration for now and the future, though uniquely, it is not a government fund, but was created to supplement what the government provides to biodiversity conservation. It was created in 2016 having been initiated in 2012 by the Uganda Conservation Partners.[10]

Uganda is one of the most bio diverse countries on the planet and ranks second among all African countries in term of its biodiversity. That natural richness provides the foundation for Uganda's economy with an estimated $746.6 million being generated annually from biodiversity related products and services in fisheries, forestry, tourism, agriculture and energy sectors. Over the years however, there has been growing loss of Uganda's rich biodiversity. The government of Uganda estimates that the financing gap for biodiversity conservation stands at $455 million per year: desired resource requirements stand at $670 million per year while current allocations only reach $216 million per year.[11]

The Consolidated Fund is the Government account onto which all government revenues and funds are paid and from which money is withdrawn to fund all activities of government.[12] Clearly, this cannot be able to preserve revenue for future needs because; even the needs of the present generation are not half met. Uganda has a narrow tax base and as such always runs a deficit budget, year in, year out and depends a lot on donor funding.[13] Uganda is also debt burdened and a lot of its revenue goes to payment of interest on loans.[14]

The Uganda Road Fund (URF) was established by an Act of Parliament in 2008 and became operational in 2010. The objective of setting up this fund was to enable steady and reliable funding for routine and periodic maintenance of public roads mainly from road user charges. The URF is mandated to Collect Road User Charges (RUCs) and manage the funds so collected to finance road maintenance programmes.[15]

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[10] Uganda Biodiversity Fund. http://ugandabiodiversityfund.org/ - Accessed 29/07/18.
[11] Ibid.
[12] Public Finance Management Act of Uganda, Section 30.
[13] Ismail Musa Ladu, Budget won't deliver middle income status, experts say, The Daily Monitor Wednesday January 17 2018 - Http://Www.Monitor.Co.Ug/Business/Budget-Wont-Deliver-Middle-Income-Status-Experts-Say/688322-4266016-Gk54h6/Index.Html - Accessed 30/07/18.
[14] Ibid.
[15] Uganda Road Fund, Section 6.

The Road Fund Act provides for a political and operational oversight over the fund by the Ministries of Finance, Planning and Economic Development, Works and Transport, and Local Government, unlike the SWF which is operated by the Bank of Uganda. The fund is functionally supervised by the Minister of Finance, Planning and Economic Development (MoFPED). It reports to Parliament through the Minister. Without a strict fiscal rule, the funds are bound not to achieve its purpose. The Annual Reports of the URF already reported misuse of the maintenance funds.[16] The Fund also suffers low collections of RUCs which situation is worsened by cuts on allocations from the consolidated fund.[17]

Uganda has received new USD 478 Million Global Fund Grant to support HIV, TB and Malaria programs in Uganda under the theme "Quest for improved Health Service Delivery."[18] As can be recalled, this is not the first time that Uganda is benefiting from the Global Fund for the very same purpose. The funds were, however, mismanaged causing a loss of USD 37 M (UGX 124.8 Bn) leaving so many HIV, TB and malaria patients without drugs.[19]

Another Global Scandal scam causing a loss of USD 3.9 M (13.1 Bn) was reported in 2016. Prices for malaria drugs were being hiked and accountability was lacking.[20] The findings of the Office of the Inspector General Report point out challenges in the management of programmers and grants which are a result of failure by the Ministry of health to consistently undertake follow up actions to address this problem.

By the time the oil was discovered, Uganda had experienced positive and negative outcome of the different funds and to avoid re-occurrence of the negatives, it sought to establish and manage oil and gas revenues differently by creating the SWF and a fiscal rule without which on oil revenue spending could create a major risk for the sustainability and stability of public expenditures.[21]

[16] The Uganda Road Fund Annual Report, Financial Year 2015/2016, p. 59.
[17]ibid
[18] Office of the Prime Minister. Opm.go.ug – Accessed 30/07/18.
[19] Relief Web, 'Uganda gov't releases final report on Global Fund scandal' 10, April 2007 - https://reliefweb.int/report/uganda/uganda-govt-releases-final-report-global-fund-scandal - Accessed 30/07/18.

[20] Daily Monitor, 'Uganda in another Global Fund scam' MARCH 5 2016 – http://www.monitor.co.ug/news/national/uganda-another-global-fund-scam/688334-3103560-38h9bwz/index.html- Accessed 30/07/18.
[21] T. Lassourd and A. Bauer, 'Fiscal Rule Options For Petroleum Revenue Management in Uganda,' *Policy Paper, Revenue Watch Institute,* April 2014.

1.3 Statement of the Problem

Uganda has been grappling with poverty for many decades and the discovery of commercially viable oil reserves in the Albertine Graben in 2006 stirred excitement among Government and the public. There are high expectations of earning a lot of revenue to boost the economy and go a long way in achieving early realisation of poverty reduction in Uganda. Estimates show that oil production could be sustained at around 150,000 barrels per day for 20 to 25 years based on the estimated reserves of 2.5 billion barrels. Production at these levels for 20 years would equate to total production of 1,095 million barrels.[22]

The Petroleum reserves are finite and or transient in nature and need to be used sustainably to allow not only the present, but also future generations to meet their petroleum energy needs. Experience has unfortunately shown from other oil rich countries (Nigeria and Angola) that if the petroleum revenue is not well managed, it can leave the country worse off than it was before the discoveries as a result of the oil curse. The current legal framework intended to govern the country's Sovereign Fund for the monies derived from the oil and gas sector is weak. It cannot be relied on to govern the country's Oil and Gas Sovereign Fund. Should Uganda fail to put in place strong legal mechanisms to monitor utilisation of funds from the oil and gas sector, then the country will be heading for doom—the oil curse.

1.4 Research Objectives

1.4.1 Main Objective

To assess the ability of the existing legal framework to promptly management the Uganda Petroleum Fund in the oil and gas sector in Uganda.

1.4.2 Specific Objectives

i. To discuss the International legal framework for the establishment and management of the Uganda Petroleum.

ii. To discuss the National Legal Framework for governing the Uganda National Petroleum Fund.

iii. To assess the non-legal factors affecting the management of Uganda National Petroleum Fund.

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https://resourcegovernance.org/sites/default/files/documents/uganda_policypaper_web20140505.pdf.- Accessed 20/07/18.

[22] Oil and Gas Revenue Management Policy of Uganda, 2012.

1.5 Research Questions

i. What is the International legal framework for the establishment and management of the Uganda Petroleum?

ii. What is the National Legal Framework for governing the Uganda National Petroleum Fund?

iii. What are the non-legal factors affecting the management of Uganda National Petroleum Fund?

1.6 Scope of the Study

1.6.1 Geographical Scope

The study focussed on the areas around Kampala city under the Ministry of Energy and Mineral Development.

1.6.2 Content Scope

The study focussed on the analysis of the strengths and weaknesses in the existing legal framework for the management of the SWF.

1.6.3 Time Scope

The study covered the period of 2006 to date. This covers the period from when commercially viable oil reserves were discovered in Uganda followed by the development of the existing legal framework for the management of the SWF in the oil and gas industry in Uganda.

1.7 Significance of the Study

This research will acknowledge the existing research on the strengths and weaknesses in the existing legal framework for the management of the SWF in the oil and gas sector in Uganda. This was done by reviewing of existing literature. Further, the study will contribute to the existing research by pointing out the existing gaps in area of study and making relevant recommendations.

This study also points out gaps in the legal framework for the management of the SWF and help in highlighting the policy issues that need the attention of decision makers. It will also form a basis for further research. The research will enlighten the public on the importance of having a robust legal framework for the management of the Sovereign Wealth Fund for the management and investment of their oil and gas revenues and their rights and responsibilities in management of the same.

1.8 Justification of the Study

Oil and gas production leads to a lot of revenues which if not well regulated can destabilize the fiscal and macroeconomic system of the country and even lead to the oil curse on the country. The oil resources belong to the present and future generations alike and, therefore, should be strictly managed for sustainability. The SWF is one of the ways to ensure sustainable investment of the petroleum revenues and a robust legal framework and its strict implementation are critical to the realization of the same.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

In this chapter, the researcher critically and objectively reviews and summarises the laws, regulations and published literature on managing oil and gas wealth. It is of great importance to note that most of the existing literature on the works of other scholars on the study or those who have addressed similar issues will be instrumental in conceptualizing the study. The literature was exploratory in that it was in line with the objectives of the study; so as to make the researcher appreciate the contributions of the different researchers and identify the gaps.

2.2 Models of International Legal Frameworks for Management of Sovereign Wealth funds

In recent years, and since SWFs have attracted a level of attention, various regulatory models for SWFs have been proposed. A categorization of the models most commonly offered in the relevant literature follows.

In the first category are models that favour limitation of SWFs' operations. For example, one suggestion proposes a ceiling on the amount of shares SWFs can acquire in domestic companies, or that it be conditional (on state approval) for share ownership to exceed a certain percentage. A second type of model favours 'incentive-type' regulations. Supporters propose imposing charges on SWFs (such as additional taxes or restricting voting rights) until they rectify the costs they impose on target countries, or until they transfer their assets to private actors. The third kind of regulatory proposal suggests imposing reporting requirements on SWFs. Finally, another regulatory model, discussed below, advocates allowing SWFs to regulate their behaviour by themselves ('self-regulation').

2.2.1 Limiting Sovereign Wealth funds' acquisitions and protecting strategic industries

The first model suggests imposing ceilings on the share quantities Sovereign Wealth funds can acquire and/or protecting certain industries from their investment ambit. This regulatory model originally concerned formerly state-owned enterprises, in which Britain's Government purported to continue to exercise control over future ownership and activities, through the possession of a 'golden share'.[23] This enabled the state to control the percentage of shares held in a company by foreign investors, or ensure its approval was required for the execution of business activities, such as mergers and asset sales.

Garten proposed a similar scheme,[24] noting many governments contemplated adopting measures to protect their industries from SWFs, but failed to 'admit that dealing with SWFs may require departures from the conventional liberal orthodoxy concerning global trade and investment flows',[25] which Garten believed necessary. He suggested SWFs should not own more than 20 per cent of any company in the USA or the EU without the host government's permission. Garten suggested a requirement of reciprocity, where the ability of a country to buy foreign assets was conditional on it granting similar access to foreign (Western) funds. In his view, the underlying premise is that SWFs are essentially political entities and should be treated as such.[26]

Investment caps soon became a popular idea among European countries. Das highlighted that the 'knee-jerk reaction' of analysts and policy-makers in the recipient economies 'is to limit the stakes that SWFs can have in [a] certain category of industries …'.[27]

Under such a model, the regulatory authorities of the host country can determine both the accessible and the stake limits of the industries. Such a model applies in India, where the Foreign Exchange Management Act 1999 enables 'Press Notes' to be issued and establish the foreign investment policy applicable to each sector. The Press Notes determine which sectors require the prior approval of the Foreign Investment Promotion Board before foreigners may directly invest in them and which do not require approval. Additionally, the Press Notes establish the maximum percentage of a company that can be owned by a foreign investor based on the sector in which that company operates.[28]

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[23] Andrei Baev, 'Is There a Niche for the State in Corporate Governance? Securitization of State-Owned Enterprises and New Forms of State Ownership' 18 Hous J Intl L 1, 20 (1995)

[24] Jeffrey Garten, 'We Need Rules for SWFs' *Financial Times* (7 August 2007) < www.ft.com/cms/s/0/1a968284-44fd-11dc-82f5-0000779fd2ac.html > accessed 10 December 2010

[25] Ibid

[26] INT'L CTR. FOR SETTLEMENT OF INV. DISPUTES, *Introduction* to ICSID CONVENTION, REGULATIONS AND RULES 5 (2006), *available at* https://icsid.worldbank.org/ICSID/StaticFiles/basicdoc/CRR_English-final.pdf.

[27] Dilip Das, 'Sovereign-Wealth Funds: The Institutional Dimension' (2009) 56 Int Rev Econ 85, 99

[28] Press Note 7, Issued by the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, SIA (FC Section), 16 June 2008.

2.2.2 Incentive-type regulation: restricting voting shares or imposing taxes

Incentive-type regulation is softer than the regulation-type discussed above. It is designed to offer incentives to SWFs operating in various countries which encourage them either to rectify the various costs they impose on the system or to transfer the exercise of voting rights attached to company shares to third parties. While superficially appealing, analysis reveals that the underlying purpose of such proposals is to incentivize SWFs to suspend investment activities altogether.[29]

The first incentive-type regulation is the one restricting the voting rights of shares held by SWFs, a historic protectionist measure against foreign corporate control. In the USA in 1791, legislative provisions were made in the charter for the country's first quasi-central bank, the first Bank of the United States, to avoid foreign domination. Under the charter, only resident shareholders could vote and only American citizens could become directors. This provision prevented foreign control of the Bank, even though 70% of its shares by 1811 were foreign owned.[30]

Gilson and Milhaupt developed this idea in relation to SWFs. The authors' 'minimalist approach' was to remove the voting rights of equities of US firms acquired by foreign government-controlled entities, until the equity is transferred to private hands.[31] Their rationale is that, in principle, the interests of sovereign and private investors clash and they accept Keynes's maxim that 'international cash flows are always political'.[32]

The authors call this state directed capitalism 'mercantilism'. By removing voting rights, sovereigns will refrain from exercising influence over management and those who have purely financial motives will continue to invest.[33] This mechanism mirrors the 'break through' rule provided by the EU Takeover Directive.[34]

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[29] Kratsas, G., & Truby, J. (2015). Regulating sovereign wealth funds to avoid investment protectionism. Journal of Financial Regulation, 1(1), 95-134.

[30] Chang (n 41) 3.

[31] Gilson and Milhaupt (n 99) 10.

[32] José E. Alvarez, *Sovereign Concerns and the International Investment Regime*, *in* SOVEREIGN INVESTMENT: CONCERNS AND POLICY REACTIONS, *supra* note 17, at 258, 259–61.

[33] Arvind Subramanian & Aaditya Mattoo, *Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization* (Ctr. for Global Dev., Working Paper No. 142, 2008) (emphasizing the trade-distortion effect of currency manipulation and sovereign funds' investments).

[34] The 'break through' rule provides that shareholder voting restrictions provided by corporate charter, contracts or different shareholders' agreements do not apply where the offeror has gained 75% of the target company's shares.

Gilson and Milhaupt accept that their model may lead to unsuccessful results if applied in an under-inclusive or an over-inclusive manner. In the first case (under-inclusion), the model will lack effectiveness if it is not applied to other manipulative transactions, such as requiring strategic concessions before an SWF injects more capital into a portfolio company (problem of reciprocity); or if it does not cover state investment entities other than SWFs which may also be used to advance political goals, such as government-controlled companies.[35] The authors believe that these problems can be managed under existing disclosure rules in developed countries or via other measures dealing with the phenomenon of state capitalism in general.[36]

In the second case (over-inclusion), the measure may apply to foreign public entities other than SWFs, such as state pension funds, and could risk being imposed by foreign governments on US state pension funds, such as the CalPERS. Gilson and Milhaupt argue that suspending the voting rights of US state pension fund foreign equity investments should not hurt the funds' performance for the same reason that vote suspension should not deter US equity investments by foreign SWFs who do not have a strategic motive.[37] Conversely, this negates the positive impact that shareholder activism by US state pension funds has had on corporate governance standards in other countries. The authors accept this cost, but believe it is not a large one, mainly because the role played by US state pension funds in the effort to improve corporate governance standards has not been central.[38]

Another proposal falling in the category of 'incentive regulation' is the one offered by Fleischer in 2009.[39] Fleischer based his discussion on the US tax regime that currently treats SWFs as sovereigns for tax purposes.[40] Sovereign status in this context can be a significant benefit. As long as the SWF does not engage in commercial activity other than 'portfolio investments' (defined as the acquisition of non-controlling stakes), the funds can avoid both US income taxes and withholding taxes on their US investments.[41]

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[35] Gilson and Milhaupt (n 99) 26–28.

[36] Christopher Balding, A portfolio Analysis of Sovereign Wealth Funds (HSBC School of Business, Working Papers Series, 2008), available at http://ssrn.com/ abstract=1141531

[37] Ibid *Supra* note 13

[38] Ibid *Supra* note 13

[39] Victor Fleischer, 'A Theory of Taxing Sovereign Wealth' (2009) 84 NYU L Rev 440.

[40] US Tax Code, s 892.

[41] See also, Michael Knoll, 'Taxation and the Competitiveness of Sovereign Wealth Funds: Do Taxes Encourage Sovereign Wealth Funds to Invest in the United States?' (2009) 82 S Cal L Rev 712.

Private-foreign investors, conversely, are generally taxed lightly on their portfolio investments in the USA, but do face significant taxes on some types of income, such as dividends from US corporations and certain real estate investments.[42] Fleisher, citing *Qantas Airways v US* ,[43] argues that such generosity is not required under international law, as ‘the international doctrine of sovereign immunity as such imposes no restrictions’ on the USA’s right to tax SWFs.[44]

Calculating when an exemption should be warranted would be complex since SWFs have varying degrees of independence from government influence.[45] In the USA, an entity which is at least 50 per cent owned by a foreign government loses the tax exemption,[46] as does one where the foreign government[47] has sufficient interest for effective control.[48] The US policy ensures SWFs remain as minority shareholders and draws the line at having foreign governments control US companies without paying tax.

In other cases, it may be futile to attempt to link an SWF action to its respective government. Even if this hurdle is overcome, most governments now adopt a more restrictive approach towards sovereign immunity, which immunizes foreign states from suits in connection with sovereign acts, but does not equally cover commercial acts.[49] This exception from immunity applies both with regard to immunity from jurisdiction as well as immunity from execution.[50] States adopting this approach include the USA[51] and the UK,[52] the primary recipients of SWF investments. The jurisdictional immunities of the state were addressed again in February 2012 in the case of *Germany v Italy (Greece intervening)*[53] before the

[42] Fleischer (n 120) 463–5.
[43] *Qantas Airways, Ltd v United States* , 62 F 3d 385, 388–90 (Fed Cir 1995).
[44] Fleischer (n 120) 459.
[45] SWFs can have varying degrees of independence from government influence. In certain cases, it would, indeed, be futile to attempt to link an SWF action to its respective government.
[46] United States Code, 2006 Edition, Supplement 5, Title 26 - INTERNAL REVENUE CODE, § 892(a)(2) - Income of foreign governments and of international organizations.
[47] Defined as the integral parts of a government or anybody that constitutes a governing authority. Treasury Regulation s 1.892-2T(a)(1) (1988)–Treasury Regulation s 1.892-2T(a)(2).
[48] IRC s 892(a)(2)(B) (2006)
[49] James Berger and Charlene Sun, ‘Sovereign Immunity: A Venerable Concept in Transition?’ (2011) 27(2) Intl Litig Q 5.
[50] David Gaukrodger, ‘Foreign State Immunity and Foreign Government Controlled Investors’ OECD Working Papers on International Investment 2010/02, 5 < http://www.oecd.org/corporate/mne/WP-2010_2.pdf > accessed 1 November 2014.
[51] Letter from Tate, Acting Legal Adviser, US Department of State, to Acting US Attorney Perlman, 19 May 1952, reprinted in 26 Department of State Bulletin 984–85; Under the restrictive theory, foreign states were accorded immunity for their governmental acts, but not for their private or commercial acts
[52] s 14(2), (3) State Immunity Act 1978.
[53] Jurisdictional Immunities of the State (*Germany v Italy: Greece intervening*) – Judgment, I.C.J. Reports 2012, p. 99 < http://www.icj-cij.org/docket/files/143/16883.pdf>.

International Court of Justice. The Court noted that it was not called upon in these proceedings to consider the question of how international law treats the issue of state immunity for non-sovereign activities, especially private and commercial activities (*acta jure gestionis*) to which, under many laws, immunity does not apply.

As Truman, rightly, notes: governments are understandably concerned about not compromising their room to manoeuvre in managing their international investments … however, once a government seeks to operate outside its national borders, then it no longer is "sovereign" in most respects'.[54]

Indeed, in most jurisdictions, sovereign immunity does not apply to foreign governments' commercial activities.[55] This point becomes relevant when considering the applicability of the 'act of state doctrine' to the behaviour of SWFs. The act of state doctrine holds that 'every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgement on the acts of the government of another done within its own territory'.[56] This doctrine is used to protect a national government from the scrutiny of acts performed within its own borders by foreign courts.[57] For acts performed by a government outside its national borders, the act of state doctrine cannot be evoked.

Fleischer develops a theory of taxing sovereign wealth as a complementary instrument to other regulations. He performs a cost–benefit analysis (CBA) of the operation of SWFs and concludes that the negative externalities outweigh the positive ones.[58]

In his view, because the potential for negative harm is severe, the potential for positive benefit modest, and the capital supplied by SWFs so easily replaced by private

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[54] Truman (n 89).
[55] For a more detailed discussion on the issue of 'sovereignty' and how it applies in the context of SWFs see, Kathryn Gordon and April Tash, 'Foreign Government-Controlled Investors and Recipient Country Investment Policies: A Scoping Paper' OECD (2009) 10, 16 < http://www.oecd.org/investment/investment-policy/42022469.pdf > accessed 8 December 2014.
[56] *Underhill v Hernandez* , 168 US 250 (1897). In this case, Underhill instituted an action in a New York Court to recover damages for his detention in Venezuela by Hernandez's new revolutionary government. Finding for the defendant, the court determined that Hernandez had acted in his official capacity as a military commander so his actions were those of the Venezuelan government. Therefore, based on the act of state doctrine, the Court refused to hear Underhill's claim against the government.
[57] For more see, Michael Zander, 'The Act of State Doctrine' (1959) 53 AJIL 826.
[58] He argues SWFs: threaten American foreign policy interests; support the inefficient allocation of resources; increase managerial slack (for example, when China acquired a non-voting stake in Blackstone); may have a contagion effect as a result of their lack of transparency; encroach on the autonomy of the American enterprise (in exchange for foreign investments), and support autocratic regimes, see (n 120) 485 ff.

investors,[59] there is a *prima facie* case for a Pigouvian tax.[60] Fleischer argues that setting the right tax rate[61] depends on what policymakers believe is the hurdle rate of SWF investors, which means in practice, whether they should be taxed more or less than private investors.[62]

Following representations made to the US Joint Committee on Taxation, Funk argues the US tax exemption[63] in reality is unlikely to impact on the structure of an investment by an SWF, given the usual nature of such investments.[64] The notion that SWFs' investments are not significantly affected by possible tax exemptions may minimize the economic (if not political) case for a Pigouvian tax.

The above proposals' objective is to incentivize SWFs either to sell their stakes to privately held companies (Gilson and Milhaupt) or to reduce the costs they impose upon the system (Fleisher). However, as discussed below, both systems contain the basic elements of all incentivizing schemes but fail to provide clear guideline by which SWFs could continue to operate in financial markets and, simultaneously, retain their voting rights or avoid tax charges.

2.2.3 Command and control regulation: increase transparency through reporting requirements

This type of regulation advocates forcing SWFs, through legislation, to produce reports with specific information, thus aligning themselves with the regulated part of the industry, such as mutual funds, banks, and insurance companies.[65]

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[59] Although he states that 'neither the brightest promises nor the greatest perils of [SWFs] have yet been realized', see (n 120) 494.

[60] A Pigouvian, or corrective, tax, is designed to make the person who engages in an activity with negative externalities or public harms internalize the costs associated with that activity, Arthur Pigou, *The Economics of Welfare* (4th edn, Macmillan and Co 1932) 192–93.

[61] On the complexity of policymakers selecting an optimal rate, see Jon Truby, 'Fiscal tools for inclusion of GCC states in the global environmental programme: focus upon new vehicle imports' in *Critical Issues in Environmental Taxation, Volume XI* (Edward Elgar 2012); Jon Truby, 'Towards Overcoming the Conflict Between Environmental Tax Leakage and Border Tax Adjustment Concessions for Developing Countries' (2010) 12 Vermont Journal of Environmental Law 149

[62] Fleischer (n 120) 469; 472–3.

[63] Staff of Joint Committee on Taxation, 110th Cong, Economic and US Income Tax Issues Raised by Sovereign Wealth Fund Investment in the United States 21-22 (Comm Print 2008).

[64] William Funk, 'On and Over the Horizon: Emerging Issues in U.S. Taxation of Investments' (2010) 10 Houston Bus & Tax L J 1, 6.

[65]For examples of such regulations, see for instance, in the US context, the Employee Retirement Income Security Act 1974 (Pub L No 93-406, codified in part at 29 USCS s 1002 and the following) applying to pension funds; the Investment Advisers Act 1940 (15 USC s 80b-6) for institutional advisors; See also, Sandra Blome and others, 'Pension Fund Regulation and Risk Management: Results from an ALM Optimisation Exercise' OECD, Working Papers on Insurance and Private Pensions No (2007) 8.

Keller suggests an 'indirect' supervisory and regulatory framework adapted to address the specific concerns about SWF investments may be based 'on the mandatory requirement for a SWF to conduct investments over a certain threshold (or investments of certain kinds) through third-party professional asset managers', or alternatively 'to disclose its shareholder voting records when the ownership percentage in a company exceeds a given threshold'.[66]

A more detailed model is proposed by Mezzacapo, who suggests following a two-layer approach of 'self-regulation within a statutory framework',[67] similar to the one widely adopted in Europe for stock exchange regulation. In this respect, she recalls the provisions introduced in 2005 in the Italian Financial Consolidated Act[68] in order to increase transparency, and thus market discipline, in relationships between Italian listed companies and foreign companies having their registered office in a country whose legal system does not ensure transparency.[69] The same provisions also apply to Italian companies with financial instruments widely distributed among the public and affiliated with or controlled by such foreign companies.

Pursuant to Articles 165 *ter* –165 *septies* of the Italian Financial Consolidated Act, Italian listed companies linked, controlled or under the influence of 'foreign non-transparent companies', for example, SWFs, should attach to their Annual Report a Relation illustrating the relationship existing with 'foreign non-transparent companies'. Italy's Securities Commission is entrusted with significant supervision and on-site inspection powers, while relevant countries are identified in joint decrees issued by the Minister of Justice and the Minister of the Economy and Finance (using criteria listed in the same Italian Financial Consolidated Act).[70]

In order to prevent jurisdiction shopping by SWFs, where state investors would select as targets the jurisdictions that are more favourable to them, reporting requirements could be implemented on a global basis. A number of international organizations could be considered to host such an enterprise, although it is argued by Mattoo and Subramanian that the WTO would be the 'natural' place to strike a bargain between countries with SWFs which want

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[66] Amy Keller, 'SWFs: Trustworthy Investors or Vehicles of Strategic Ambition?' (2008) 7 Georgetown Journal of Law & Public Policy 51

[67] Mezzacapo (n 90) 45.

[68] Legislative Decree n 58 of 24 February 1998.

[69] Meaning transparency as to their establishment, assets and liabilities, and operations.

[70] Aaditya Mattoo and Arvind Subramanian, 'Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization' *Peterson Institute for International Economics* , Working Paper Series 2008-02, 16.

secure and liberal access for their capital, and capital-importing countries that have concerns about the objectives and operations of SWFs.[71] According to the authors, such a bargain would necessarily involve greater transparency by SWFs and channelling investment through independent asset managers, in return for access for SWF investors to Western markets. The model for the transparency requirement could be the disclosure requirements of the OECD's principles of corporate governance.[72]

2.2.4 Self-regulation Model

Since the beginning of the debate on SWFs, the idea of self-regulation has not received wide support in the literature. Most commentators seemed unaccepting that, left to themselves, SWFs would produce a reliable regulatory framework to address the perceived costs raised by the activity of SWFs. The model of self-regulation was, nevertheless, the one opted for by the IMF during the International Working Group which culminated in the 'Generally Accepted Principles and Practices' (GAPP) (discussed in more detail below). Even now, GAPP (or 'Santiago Principles') offer possibly the most effective route towards reducing the costs due to SWFs and silencing their critics, and together, reducing protectionist pressures.[73]

The categorization above of the most commonly proposed regulatory models has offered a platform of analysis on the basis of the real issues that surround SWFs, namely their benefits and concerns about them.

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[71] Ibid

[72] OECD, 'OECD Guidelines on Corporate Governance of State-Owned Enterprises' OECD Publishing 2005 < www.oecd.org/dataoecd/46/51/34803211.pdf > accessed 1 November 2014.

[73] Kratsas, G., & Truby, J. (2015). Regulating sovereign wealth funds to avoid investment protectionism. *Journal of Financial Regulation*, *1*(1), 95-134.

2.2 National Framework for Managing the Sovereign Wealth Fund

robust legal framework is required to promote sound institutional and governance arrangements for the effective management of SWFs. The SWF legal framework should among other things (i) provide clearly for the legal form and structure of the SWF and its relationship with other state bodies (including the ministry of finance (MoF), central bank); (ii) be consistent with the broader legal framework governing government‘s budgetary processes; (iii) ensure legal soundness of the SWF and its transactions; (iv) support its effective operation and the achievement of its stated policy objective(s), which should be economic and financial in nature; and (v) promote effective governance, accountability, and transparency.

In practice, there is a wide variety of legal frameworks for SWFs. This partly reflects the fact that different countries have chosen different legal forms for these funds. Generally, SWFs are established (i) as separate legal entities under law with legal identities and full capacity to act;[74] (ii) take the form of state-owned corporations also with distinct legal persona;[75] or (iii) as a pool of assets owned by the state or the central bank, without a separate legal identity.[76] All of these forms are compatible with recognized practices and principles, but the legal basis for a SWF must clearly establish which form the SWF has.

In practice, the different legal forms may have implications for both the tax position and immunity of investments. Investments through central banks will normally be protected by sovereign immunity and may also enjoy tax privileges in recipient countries. Taxation of investments through corporate structures may depend on the extent to which these investments are viewed as an integrated part of the government’s financial management. Tax treatment of SWFs investment can also depend on provisions in bilateral tax agreements (e.g., Norway has negotiated tax exemptions for its SWF investments in several bilateral tax treaties).

There is also a wide variety when it comes to the degree of granularity of primary legislation. This will partly reflect different traditions and/or constitutional requirements across countries.

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[74] Australia, Kuwait, New Zealand, and UAE (ADIA)
[75] Temasek (Singapore).
[76] Botswana, Chile, Norway, and Timor-Leste.

Some countries have very short primary legislation but more granular secondary legislation.[77] There are also differences with respect to how much delegation of authority laws in different countries provide for. Again, many levels of granularity may be compatible with recognized international practices. But it is essential that the overall legal framework provides for real delegation from owner to manager and that it grants the operational manager independence within the guidelines set by the owner.

The institutional frameworks across SWFs differ. Regardless of the governance framework, the operational management of an SWF should be conducted on an independent basis to minimize potential political influence or interference that could hinder the achievement of the SWF's objectives. The manager model and the investment company model are the two dominant forms of institutional setup for SWFs.[78]

Legitimacy can be obtained using different legal structures. In Norway's legal framework set by the Government Pension Fund Act 2005, the Ministry of Finance, reporting to Parliament, is directly responsible for the fund and deposits the fund with the central bank. The fund is managed by a subdivision of the central bank, Norges Bank Investment Management (NBIM).[79]

The degree of delegation is formalized in the regulations set for the fund by the Ministry of Finance. Norway takes the view that it is only by making the fund as transparent as possible that most of the public can build trust in the maintenance and management of its SWF. Thus, when governments change, the role of the fund in society and the understanding of its purpose do not. As political dynasties change over time, there may be temptation for society and politicians to give into the siren's cry to raid the large sums of capital. The broad public understanding behind the legitimacy of the SWF acts as a self-restraint mechanism for governments not to spend the money immediately and save it for future generations.[80]

An alternative perspective is taken by Australia. Its SWF, like Norway's, issues regular financial reports, is transparent, and Australia has a long history of a democratic style of

[77] The law on the Norwegian SWF has nine short sections, giving the Ministry of Finance the power to manage the Fund. The Ministry, however, has issued a comprehensive and publicly available mandate for the management of the fund, which is carried out by Norges Bank Investment Management, the investment arm of the Central Bank of Norway

[78] Al-Hassan, A., Papaioannou, M. M. G., Skancke, M., & Sung, C. C. (2013). *Sovereign wealth funds: Aspects of governance structures and investment management* (No. 13-231). International Monetary Fund.

[79] Ang, A. (2010). The four benchmarks of sovereign wealth funds.

[80] De Meester, B. (2009). International Legal Aspects of Sovereign Wealth Funds: Reconciling International Economic Law and the Law of State Immunities with a New Role of the State. Eur. Bus. L. Rev., 20, 779.

government. In contrast to Norway, the Australian Government Future Fund is set up independently of the government in a separately managed investment fund. The fund is overseen by an independent Board of Guardians selected for their competence in investment management.[81]

The legislation creating the fund, the Future Fund Act 2006, stipulates that money may not be withdrawn from the fund until 2020 except for meeting operating costs or when the fund exceeds a "target asset level" where the fund level adequately exceeds pension liabilities, as determined by the government actuary. [82]

The Board must keep the responsible Ministers informed of the operations of the Board, but the Board operates independently of the government. In this setup, the government is intentionally hobbled in accessing the monies in the fund. Australia's structure minimizes the discretion in the spending and management of the capital by politicians and moves the management of the money as close as possible to investment professionals.[83]

2.3 Non-legal Factors Affecting the Establishment and Management of Soverign Wealth funds

With the active performance of SWFs in the financial crisis of this century, academics began to attach importance to the study of the conditions and the reasons for the establishment of SWFs.[84] Previous studies have shown that generally the countries that establish and operate SWFs have as the main objectives the inter-generational transfer of wealth and diversified investment strategy, and also they have the corresponding objective economic conditions, which depend mainly on three major aspects: the foreign exchange reserves, the domestic economic stability and the strategic goals of the economy. These conditions need to be integrated when considering the economic feasibility of establishing the SWF.

[81] Sinquin, M. (2012). *Good governance of sovereign wealth funds. The case of the Australia Future Fund* (Doctoral dissertation, Institute of Advanced Legal Studies, School of Advanced Study).
[82] Ibid *supra* note 57
[83] Ibid
[84] Studies regarding this aspect include: Simon Johnson, ''The Rise of Sovereign Wealth Funds,'' Finance & Development ,Vol.44, No.3 , September 2007; Edwin Truman, Sovereign Wealth Funds: The Need for Greater Transparency and Accountability, Peterson Institute for International Economics, August 2007; And more recent empirical studies such as: B.J. Reed, ''Sovereign Wealth Funds: The New Barbarians at the Gate? An Analysis of the Legal and Business Implications of Their Ascendancy,'' Virginia Law & Business Review, No.4, 2009, pp.110–112;

2.3.1 A prerequisite for the construction of a sovereign wealth fund is sufficient foreign exchange reserves

The first condition to establish SWFs is surplus in foreign exchange reserves. "Only when a country has sufficient foreign exchange reserves, can it be possible for it to consider what investment tools to choose in order to maximize the profits of the foreign exchange it holds.''. To choose SWFs enables the countries that have established the funds to benefit from the growth of the global economy and prevent the risk of holding too much of a single foreign currency, such as the US dollar.[85]A country's foreign exchange reserves should be considered in conjunction with other macroeconomic conditions in order to determine whether it is sufficient. Usually the international balance of payments, GDP, external debt and money supply situation need to be taken into consideration.

First, from the perspective of the international balance of payments, the countries that have established the funds tend to have surplus. According to the statistics of SWFI, the countries that have established the SWFs all have current account surplus of a considerable scale. Even though trade deficit may exist in some countries, it is often because there is a large deficit in service trade. In fact, the merchandise trade surplus still stands, just not enough to make up for the deficit of trade in services.[86]

Secondly, foreign exchange reserves of the countries that have the SWFs have a relatively high ratio in GDP, as well as a growing trend.[87] According to the statistics of SWFI, these countries, whether developed or emerging countries, almost all have considerable foreign exchange earnings, which is necessary for these countries to build their own SWFs; plus, foreign exchange reserves have to have an increasing trend in GDP at the time of the establishment of SWFs. Another research into the correlation between foreign exchange reserves and the establishment of SWFs in 241 countries shows that the higher percentage foreign exchange reserves take up in GDP, and the higher the percentage of energy exports account for in the total exports of goods, the more likely is a country to establish a sovereign wealth fund.[88]

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[85] Ibid
[86] Chaisse, J. (2011). Emerging sovereign wealth funds in the making: Assessing the economic feasibility and regulatory strategies, Journal of World Trade, Vol.45, No.4.
[87] Yang, Z. (2008). Issues in the long-term development of sovereign wealth funds, Asia-Pacific Trade and Investment Review, No.4
[88] Ibid

In addition, the foreign exchange reserves should be weighed in conjunction with the foreign debt and the money supply to be decided whether it is sufficient. The study of Park and Estrada shows that the ratio of the foreign exchange reserves to the short-term external debt in those countries tend to establish SWFs should be higher than one. If this ratio is lower, then the macroeconomic conditions are not suitable for the establishment of SWFs.[89] The logic behind this view is that a country should have enough foreign exchange reserves to cope with the large number of short-term foreign capital withdrawal within a certain time. On the other hand, the country's money supply should be analyzed as well when considering the adequacy of foreign exchange reserves. According to monetary theory, the broad sense of money supply regulates the consumption and asset prices in a country’s economy, as well as impacts on investment.

2.3.2 Stable domestic economy

In addition to sufficient foreign exchange reserves, a stable domestic economic situation is also the necessary condition for the establishment of the SWFs (Dai, 2012: January). It is generally believed that countries with higher total savings tend to establish their sovereign wealth funds to make foreign investments because the gap between the large amount of savings and domestic investments provides money for sovereign wealth funds. Countries can take advantage of this to realize the optimal allocation of funds worldwide and to break the imbalance in the financing cycle between the developing and developed countries.

In addition to the high savings, domestic government borrowing should also be considered. Domestic macroeconomic stability is vital for establishing and maintaining SWFs. According to macroeconomic theory, increased government borrowing in the domestic market will reduce the amount of savings that can be provided to the private economy.[90] In this sense, government spending will correspondingly reduce private investment spending, producing the so-called “crowding-out” effect.

Then, the economic expansion capacity will be significantly less than the government’s target. Moreover, the growth in interest rates usually need to be maintained during continued government borrowing, which in turn will lead to the inflow of foreign capital and the appreciation of the local currency, resulting in a decline in the export competitiveness and

[89] Sornarajah, M. (2011: June 14). Sovereign wealth funds and the existing structure of the regulation of investments, Asian Journal of International Law
[90] Ibid

exacerbated trade deficits, affecting the international balance of payments. the scale of government borrowing therefore is also a key factor in the establishment of the SWFs.[91]

Given that the saving equals investment in the private economy, then reflected by the government's budget deficit is the trade deficit. If all the savings of the country cannot support all of the domestic investments, then the country needs to borrow from abroad.[92] This will result in a net income decline and increased foreign debt. This way, the increase in the fiscal deficit (unless there are savings in private economy) will lead to a reduction in domestic private investments.

In cases where domestic investment is less than domestic savings, which means a large fiscal deficit in the country, the need for external capital inflows or foreign exchange reserves to make up the deficit will appear. In other words, surplus under the current account is an important safeguard. If there is no surplus or deficit, then the official reserves net increase in the foreign currency reserve assets can only be seen as capital inflows, turning into foreign borrowing. This shows that the government borrowing will offset the foreign exchange reserves and total domestic savings, and that the budget deficit will detract from the possibility of the establishment of SWFs.[93]

2.3.3 Strategic goals

The establishment of SWFs, besides the aforementioned objective economic conditions, depends also on the strategic objectives of a country's economic development.[94] Generally the strategic goals to establish the SWFs can be divided into the following five categories: first, the protection and stability of a country's finances and economy, to avoid the risk caused by the change in exports or foreign exchange earnings; second, the establishment of a diversified fund for a non-renewable resource export earnings; third, greater benefits than the foreign exchange reserves; fourth, reservation of wealth for future generations; and, fifth, accumulation of funds for social and economic development.[95]

In summary, adequate foreign exchange reserves are a prerequisite for the establishment of the SWFs. Economic conditions symbolizing stability of domestic economy, including

[91] Ibid
[92] Rose, P. (2008). Sovereign wealth funds – Active or passive investors, Yale Law Journal Company.
[93] McKinsey Global Institute. (2007: October). The new power brokers: How oil, Asia, hedge funds, and private equity are shaping global capital markets.
[94] Slawotsky, J. (2009). Sovereign wealth funds as emerging financial superpowers: How US regulations should respond, Georgetown Journal of International Law, No.40.
[95] Ibid

international balance of payments, the percentage of foreign exchange reserves in GDP, external debt, money supply, as well as the budget deficit, and the strategic objectives of a country's use of foreign exchange are all very important factors. One country needs comprehensive consideration of the economic conditions when making the decision of establishing SWFs.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

In this section an overview of how the research will be conducted is presented. It describes the research design, the target population, sample size, sampling technics, research instruments, data collection procedures and data analysis and limitations of the study.

3.2 Research Design

This study will make use of the mixed research methodology where both qualitative and quantitative methods were employed. Qualitative design method will be used and included interviews targeting specific groups of people especially those with reliable information and knowledge that is important to the success of this research and data analysis through published documents and literature that is relevant to the topic in question.

Qualitative research technique also subscribes to the constructionism ontological direction. In this orientation, the researcher assumes that, the social world as being external to the community actors or members.[96] Amaratunga established that the qualitative approach generally stresses the observation of events as they are, emphasises the use of words and texts to define reality and participants in their normal circumstances.[97] Under qualitative research method, the researcher uses methods and techniques like interviews, existing literature and observation to express realism of situations.[98]

A qualitative researcher has the capability to alter the methods of collecting data, processes and practices as time goes on.[99] This change is necessary to adapt to changing circumstances so that the researcher achieves the intended objective of the study. This therefore makes the qualitative approach to appear more natural and real contrary to the artificial dealing with figures by quantitative method.[100] Qualitative research has the ability to fine-tune new

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[96] Bryman, A. (2012). Sampling in qualitative research. *Social research methods, 4*, 415-429.
[97] Amaratunga, D., Baldry, D., Sarshar, M., & Newton, R. (2002). Quantitative and qualitative research in the built environment: application of “mixed” research approach. *Work study*, *51*(1), 17-31.
[98] Corbin, J., Strauss, A., & Strauss, A. L. (2014). *Basics of qualitative research*. Sage.
[99] Blaikie, N. (2009). *Designing social research*. Polity.
[100] Creswell, J. W. (2013). Steps in conducting a scholarly mixed methods study.

perceptions and matters as they occur hence, facilitating the generation of philosophies. Additionally, qualitative study guides the researcher in using logic to appreciate the environment prevailing around the investigation topic. This is mainly achieved by employing the skill and experience when cross-examining the respondents.[101]

Qualitative study tends to discover answers to inquiries which improve conditions of society and bring about social justice needed.[102] Qualitative technique has the ability to recognise the importance that society attributes to realities like efficient financial management, good governance and accountability.[103] Further still, qualitative research method helps to understand the situations in which major conclusions are arrived at; this framework allows people to explain why they do what they do in a way they do it.[104] On the other hand, Qualitative method may take a lot of time and resources like money where large samples of data are involved as compared to quantitative method which save time and money.[105]

Sometimes, qualitative research technique happens to be subjective, in that the results are based on the researcher's opinions concerning those questions only he or she considers important. Qualitative methods are found to have problems of generalisation when the answers are taken to be representative when a sample is taken out of the population.[106] On the other hand, quantitative research method is used to emphasise the computing and calculating of numbers during data gathering and its analysis. Likewise, it includes the gathering of facts and learning how various sets of data are interconnected by employing scientific methods to draw enumerated conclusions.

Quantitative research emphasises the use data gathering methods like arranged interviews, questionnaires, observations, secondary data analysis and content analysis of documents. Therefore, quantitative methods can either be descriptive or experimental in nature.[107] Quantitative research is also useful in the examination of big portions of data in a shorter period of time as compared to other research methods. Also, it leads to generalised findings once data is centred on a sufficient extent of the random sample. Quantitative research is also

[101] Patton, M. Q. (2005). *Qualitative research*. John Wiley & Sons, Ltd.
[102] Ibid *supra* note 3
[103] Creswell, J. W. (2008). Educational research. *Planning, conducting, and evaluating quantitative and qualitative research*.
[104] Myers, M. D. (2013). *Qualitative research in business and management*. Sage.
[105] Mugenda, O. M. (1999). *Research methods: Quantitative and qualitative approaches*. African Centre for Technology Studies.
[106] Bryman, A., & Bell, E. (2015). *Business research methods*. Oxford University Press, USA.
[107] Ibid *supra* note 8

considered to be independent of the researcher and this leads to validation of theories that have been developed about how a specified object happens.[108]

Amaratunga noted that the quantitative method makes policy making difficult because of its concentration on what is and what has existed in the past.[109] Under the quantitative methodology, it is difficult to point out the consequences of assumptions made during the designing of terms and conditions of the fiscal arrangements. In addition, unreliable data can negatively impact on the outcome and quality of the study hence, the need for scientific analytical skills.[110]

Equally, quantitative research does not distinguish between individuals and the social institutions within the world of nature. This means that people have the capacity to interpret the surroundings around them unlike the objects under study which cannot do a self-reflection or to interpret the world around them.[111] For that reason, the process of quantitative measurement tends to be artificial. For example, the relationship between the measures generated by the researcher and the concepts to be revealed are assumptions just not reality.

Disparately, quantitative research places reliance on the instruments and this process hinders the connection between the research and the normal daily life. For instance, when using questionnaires and structured interviews the researcher may not be sure whether the respondent has the necessary knowledge to answer the questions.[112] In the same approach, quantitative method of research may facilitate quick fixing of variables where the researcher has little or no contact with individuals and the field[113], established that the quantitative methodology gives data by dropping the original data to just figures after eliminating or overlooking the content rooted in the data. These numbers are then interpreted by addition of context to them in order to pass them back to the communal world.[114]

The mixed method is an amalgamation of qualitative and quantitative studies, this approach allows the advantages and shortcomings of each technique simultaneously.[115] The mixed method offers different understanding of research problems. Consequently, the mixed method

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[108] Ibid *supra* note 8
[109] Ibid *supra* note 1
[110] Collis, J., & Hussey, R. (2013). *Business research: A practical guide for undergraduate and postgraduate students*. Palgrave macmillan.
[111] Hox, J. J., & Boeije, H. R. (2005). Data collection, primary versus secondary.
[112] Bryman, A., & Bell, E. (2015). *Business research methods*. Oxford University Press, USA.
[113] Venable, J. D., Dong, M. Q., Wohlschlegel, J., Dillin, A., & Yates III, J. R. (2004). Automated approach for quantitative analysis of complex peptide mixtures from tandem mass spectra. *Nature methods*, *1*(1), 39.
[114] Ibid
[115] Denzin, N. K. (2012). Triangulation 2.0. *Journal of mixed methods research*, *6*(2), 80-88.

supports the ideas from different methods giving a better perspective of what is prevailing around the research subject.[116]

3.3 Target Population

The study will be carried out from specific Ministries and Agencies that are responsible for the oil and gas revenue management in Uganda. The target population is meant to be specific to, Ministry of Energy and Mineral Development; Bank of Uganda; Petroleum Authority Uganda, here in Uganda with their headquarters in Kampala.

This group of people has the most valuable and hands on information about the creation, management and funding of the countries SWF (the Petroleum Fund). They also possess a knowledge on international SWFs as many of them were involved in the nations academic tour of successful SWFs back in 2010.

3.4 Sample Size and Procedure

Sampling is the process of selecting a suitable sample, or a representative part of a population for the purpose of determining parameters or characteristics of the whole population. Purposive sampling as a sampling technique was applied and used in conducting this research. This is useful in exploratory qualitative research, and will be decisive in finding the solution in our research. It further involves identifying and selecting individuals that are experienced in a phenomenon in the research.

Convenience sampling procedure involves identifying and selecting respondents depending on their availability for study and accessibility. In this particular area of study most of the respondents are institutional heads, therefore, busy and are always on the move, therefore use of representatives of the group was prime in this research to get the required relevant information for development of the area in study.

The sample size will be determined by the number of people with crucial information in line with the specific topic in question. The targeted population in the organisations identified will be specific to senior officials responsible to the pertinent issues that are crucial to the success of the research. Sampling will be used because these samples allow a higher confidence level when developing results.

[116] Easterby-Smith, M., Thorpe, R., & Lowe, A. (2002). Management research methods. *London: Sage Publications Examinership-Friel Stafford, Available from www. liquidation. ie*.

Ten (10) respondents will be chosen from the above institution and organisations. These individuals were selected on the basis of their knowledge of the Sovereign Wealth Fund, their employment position and also their indirect influence of this issue. Below is a table that show the number of respondents from each department/institution.

Institution	**No. of Respondents**
Bank of Uganda	3
Petroleum Authority	4
MEMD (Ministry of Energy and Mineral Development)	2
Parliament of Uganda	1
Total	**10**

3.5 Data Collection Tools and Methods

Data will be obtained from key informant interviews with key and specific individuals from different organisations that have been highlighted. Documentary review will also be used as in this study. Observation will be used during the study of various secondary data of the different websites, journals and resource books.

3.5.1 Interviews

In the interview method, an interview guide will be used. This is a set of questions a researcher asks during the interview. Structured interviews are useful not only because they show excellent validity in analytical research, but also because they provide a chance to probe the answers of the respondent and understand precisely what they mean. Interviewing is a very useful approach for data collection because it allows the researcher to have control over the construction of the data and it has the flexibility to allow issues that emerge during the dialogue and discussion to be pursued. It is also done at the convenience of the respondent.

10 respondents will be interviewed in total. Of these, 3 were officials from the Bank of Uganda who were directly responsible for managing and accounting for the Petroleum Fund.

These individuals will have been in this position since the Petroleum Fund was set up and have therefore been exposed to the SWF management knowledge.

Four (4) officials from the Petroleum Authority will also be interviewed. These include high ranked officials that had a hand in the setting up of Uganda's Petroleum Fund. Also, two (2) officials from the Ministry of Energy and Mineral Development will be interviewed. The ministry is the body tusked with the overall management of the Petroleum fund on behalf of the people of Uganda. Lastly, one Member of Parliament will be interviewed. This individual will have been on the committee that amended the Public Finance Management Act in 2015.

3.5.2 Document Analysis

Secondary data from materials such as publications and reports both local and international that are in pertinent relation with the topic in study will be used to back up the primary information and relate the findings to come up with a reasonable solution for the research in question. The use of documents was basically to ensure that the researcher gets views from other writers who are instrumental in the area of research especially in comparison analysis and literature review. Though they are useful, conclusions cannot be based on these documents alone.

3.6 Data Sources

3.6.1 Primary Data

The primary data will be obtained from the respective respondents that is the managers and the other employees by use of interviews. This is for the purpose of acquiring first-hand information from the respondents.

3.6.2 Secondary Data

The secondary data will be obtained from text books, previous dissertations and the internet from online journals, documentations among others. This is for the purpose of acquiring supporting information for the study.

3.7 Validity and Reliability

3.7.1 Data Validity

Validity as the extent to which a measuring instrument on application performs the function for which it is designed.[117] To ascertain the validity of the instrument, content validity will be adopted. The instrument is validated by the researcher's supervisors at the University. The researcher will ensure that the instrument represented the entire range of possible items to be tested in the study.

Furthermore, the research that will be carried out, the researcher used the "face validity" technique.[118] Here the researcher will use easily understandable questions in the interview guide that can easily be comprehended by the respondents. Such questions enable the researcher to receive straight forward answers; hence the responses represented exactly what was "on ground".

3.7.2 Data Reliability

To ensure the reliability of the responses to the questions, the "Test re-test method" as described by Roger Hussey will be used.[119] The respondents will be asked the same questions on two separate occasions under different situations, to avoid having the respondents feeling like they are answering the same questions for a second time. Reliability is the tendency toward consistency found in repeated measurements.[120] The reliability of the instrument will be ascertained using the internal consistency method.

3.8 Ethical Consideration

To ensure privacy, the respondents will be informed that their names will not be required and it was optional for them to mention them during the interviews. The respondents will not be forced to give responses to the questions that will be asked in the study.[121]

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[117] Easterby-Smith, M., Thorpe, R., & Lowe, A. (2002). Management research methods. *London: Sage Publications Examinership-Friel Stafford, Available from www. liquidation. ie*.

[118] Alkhatib, E., Collis, J., & Ojala, H. (2017). Digital Reporting by Small Private Companies: Evidence from the UK.

[119] Collis, J., & Hussey, R. (2003). Business research: A practical guide for postgraduate and undergraduate students. *Ruona, WE (2005). Analyzing qualitative data. Research in organizations: Foundations and methods of inquiry*, *223*, 263.

[120] Sekaran, U. (2003). Research methods for business. Hoboken.

[121] Mugenda G, *Research methods Quantitative and Qualitative Approach*. (African Centre studies press 2003*)*.

To ensure more confidentiality, the respondents will be informed that the information sought is for academic purposes and the data obtained will be treated in confidence.[122] Deception will be avoided at every stage of the research. This will help to avoid any doubts in the research findings.

[122] Amin M. *Social science research concepts, methodology and analysis*, (Makerere University press 2005).

CHAPTER FOUR: INTERNATIONAL FRAMEWORK GOVERNING THE OIL AND GAS SOVEREIGN WEALTH FUND.

Introduction.

Sovereign wealth funds are investment vehicles established and managed by governments or their central banks. They originally came to prominence during the financial crises of 2007–2008, when their involvement in Europe and the United States saved iconic publicly traded companies from bankruptcy, much like a white knight would have done.[123] Following that, sovereign wealth funds re-entered the public consciousness in 2016 as a type of state-backed institutional investor. If the price of crude oil continues to fall and lingers near USD 30–40, sovereign wealth funds may be tempted to restructure their portfolios. In that case, state-backed investment funds might remove a stunning amount of money from global securities markets — up to USD 404 billion.[124]

The reason for this is that state budgets may require these monies to make up for lost earnings due to low crude oil prices. On the other hand, the position of sovereign wealth funds could be radically altered if Saudi Arabia finally creates the world's largest fund, valued at USD 2000 billion, as expected by the market.[125] As a result of this purchase, sovereign wealth funds will earn a 20% stake in the global financial markets, valued roughly USD 30 trillion.

This topic also raises important issues in Hungary. The effectiveness of the Hungarian National Bank's monetary policy over the last two years has resulted in the building of large financial reserves. The development of a sovereign wealth fund managed by the Hungarian National Bank, which has never been done before in Hungary, could be a useful use of those reserves.

[123] András, K. (2021). The Legal Background of Sovereign Wealth Funds and Their Role in National Economies. European Company and Financial Law Review, 18(1), 141-158. https://doi.org/10.1515/ecfr-2021-0001

[124] Portfolio, "Bajban az olajnagyhatalmak – Repül a családi ezüst?", 26 February 2016, http://www.portfolio.hu/finanszirozas/bajban_az_olajnagyhatalmak_repul_a_csaladi_ezust.227586.html (last accessed: 28 May 2022).

[125] John Micklethwait/Glen Carey/Alaa Shahine/Matthew Martin, "Saudi Arabia Plans $2 Trillion Megafund for Post-Oil Era: Deputy Crown Prince", 1 April 2016, http://www.bloomberg.com/news/articles/2016-04-01/saudi-arabia-plans-2-trillion-megafund-todwarf-all-its-rivals (last accessed: 28 May 2022)

Questions about the legal history of investment funds are crucial. Yet, in the case of sovereign wealth funds, the regulatory structure is much more important for two reasons. To begin with, their capital comes from public funding. Second, the state has indirect authority over sovereign wealth funds, which is normally exercised through national banks.

In Hungary, depending solely on legal rules to define the relationships between the Central Bank, the state, and the government is difficult. According to Act CXXXIX of 2013, section 5, subsection 1, the Hungarian National Bank is a stock corporation whose shares are owned by the state, and it thereby exercises its right as a shareholder. The government and other authorities are prohibited from interfering with the Hungarian National Bank's operations, according to section 1 subsection 1 of the Act. In turn, the state, as the owner, is represented by the minister in charge of the budget, who also happens to be a cabinet member. Thus, the government has tremendous influence over the Central Bank, albeit indirectly.

Regardless, certain Hungarian National Bank organs will not be directly guided. Significant decisions, such as those relating to the amendment of the articles of association or other essential matters, may be made in the name of the shareholders under section 6 subsection 1 of the Act. In addition, as stated in section 10, subsection 1 of the Act, the Prime Minister nominates the head of the Hungarian National Bank. Under Act CXXXIX of 2013, section 2 and section 131, subsections 1–2, the chairman of the Hungarian National Bank is required to report to Parliament both orally and in writing; meanwhile, under Section 9, subsection 4, point c of the act, the Parliament has the authority to appoint the members of the Monetary Council.[126]

As sovereign wealth funds work under the direction of central banks to achieve their strategic objectives, it becomes evident that governments and the state have a hand in them. It would be a severe mistake to confuse this influence as direct control, as states only have ownership rights under the appropriate legislation.

The most intriguing aspect about Hungary is that, unlike many other countries, there is now no statute governing sovereign wealth funds. Thus, future Hungarian sovereign wealth funds will be limited to operating within the confines of public law and capital market laws on fund management, with no specific piece of legislation defining their special legal status or imposing additional legal criteria on their activities.

[126] Supra note 123

Furthermore, it is investigated whether state ownership of sovereign wealth funds can be linked to their position as institutional investors. It's also worth considering whether the interests of each different nation-state – both in terms of investors and the target country – can be harmonised, and if so, what would be the most appropriate tool for doing so.

The General Legal Considerations of Sovereign Wealth Funds.

The link between sovereign wealth funds and central banks, as well as the competent ministry or ministries, determines their legal position. The central bank in charge of currency reserves and the competent ministry (for example, the ministry of economy or finance) may operate the sovereign wealth fund separately or jointly, but it is also possible for the sovereign wealth fund to be independent of both institutions and thus not assigned to either. From the foregoing, it can be deduced that there are three distinct organisational models for a sovereign wealth fund's activities.

Operating as a separate legal entity, such as a joint-stock corporation completely owned by the state, provides the greatest degree of independence. The state exercises ownership in this case through the competent ministry (e.g., ministry of finance). Such businesses are normally formed under the laws of the founding country, and are thus subject to the laws of that country's domestic company law. Singapore is a great example of this type of sovereign wealth fund, as the GIC Private Limited (Government of Singapore Investment Corporation Private Limited) operates as a private company with the state of Singapore as the sole owner.

Sovereign wealth funds founded and operated as public enterprises are normally constituted by different legal norms within the competence of a state organisation, or they are operating as autonomous organs of that state. They are not incorporated under civil law or company law requirements. These types of sovereign wealth funds are uncommon in industrialised countries; instead, they are more common in developing countries, particularly those that rely substantially on crude oil exports. The Kuwait Investment Authority (KIA), which was established by Kuwaiti Legislation 47 and whose actions are governed by the same act, is an excellent example.

Sovereign wealth funds may be sub-units of public bodies, although in this instance they are just managing the state's or central bank's assets. Their options are severely constrained in this situation, as the central bank or competent ministry has direct authority over their operations, either independently or jointly, depending on the legal structure. As a result of the lack of independent legal personalities for funds, any rights or duties that must be enforced are counted as claims against the central bank or governmental institutions. The state or the central bank, on the other hand, invests or manages assets directly through such funds. As a result, it may be inferred that these funds are not investment funds in the strict meaning of the term; rather, they serve as a mechanism for distributing resources in the national economy. Norway's sovereign wealth fund, the Norway's Government Pension Fund Global, is an example of this type of fund. The central bank's asset management department (Norges Bank Investment Management – NBIM), which is mandated by the ministry of finance, manages the Norwegian sovereign wealth fund.

The dual status of sovereign wealth funds is described in the preceding paragraph. While the state's ownership is proven in all three examples, the degree of ownership differs substantially. Asset management funds governed by public law, on the other hand, arrived on the market for institutional investors as separate legal organisations. Sovereign wealth funds' relationships with the founding state and the target state may become exceedingly delicate as a result of their size and strategy. As a result, it's vital to remember that target countries may oppose investments in sensitive industries, and their retaliatory actions could be strong and varied. The most intriguing question is whether industrialised countries have grown sufficiently prepared for such problems in light of recent occurrences. After the financial crisis of 2007–2009, China grabbed a major share of the strategic sectors of the United States, which caught them off guard. That is why industrialised countries enacted legislation[127] to protect sensitive sectors, citing investor protection and national security as justifications.

Consider the establishment of the Foreign Investment and National Security Act of 2007, which went into effect on January 23, 2008 under George W. Bush's Executive Order No. 13456. Section 721 of the Defense Production Act of 1950 was amended by this act. Previously, acquiring foreigner ownership was permissible even without a formal examination by the Committee on Foreign Investments in the United States (CFIUS), a committee specifically constituted for this purpose. Dubai Ports International – DP World, a firm that manages ports in the Middle East, took over an English public limited company, obtaining management rights over the most major ports on the East Coast, much to the dismay of the general population in the United States.[128] Due to the outrage experienced in

[127] Ivonne Lee, "The Governance of Contemporary Sovereign Wealth Funds", Hastings Business Law Journal, 2010, 209.

[128] The Peninsular and Oriental Steam Navigation Company operates numerous ports on the East Coast of USA (New York, New Jersey, Philadelphia, Baltimore, New Orleans, Miami).

the United States DP World sold the management rights of the ports to a corporation seated in the United States.

Sovereign Wealth Fund Models.

Sovereign Wealth funds have a variety of governance schemes, but they all have the same structure patterns (when viewed broadly):

a) The 'fund model': rather than being private or public, some SWFs are constituted as funds. The HKMA EF (administered by Hong Kong's Monetary Authority) is an example of this type. Another example could be the GPFG in Norway. However, if the applicable SWF NBIM is used instead of the GPFG itself, this example fits into the 'public entity model.'
b) The 'public entity model': certain SWFs are organised as public bodies or entities and are overseen by a governing body that frequently includes government officials. The KIA, ADIA, QIA, Saudi Arabia's PIF, and China's NCSSF are all examples of this type.
c) The 'State-owned entity model': some SWFs are constituted as SOEs, with the government owning shares in the SWFs and exerting some control and/or supervision over their operations. The CIC, GIC, and ICD are such examples.

Such organisational arrangements may imply that the government has some control over the SWF's management and activities. This does not rule out the possibility of an SWF making investment decisions based on commercial rather than political considerations. The ADIA, for example, claims to conduct its investment activities "without reference to the Government of Abu Dhabi,"[129] and the CIC's Articles of Association state that "the Company shall separate its commercial activities from governmental functions, make its business decisions independently, and operate on commercial grounds."[130]

The legal framework governing an SWF's activities is influenced by its organisational model, which determines whether the SWF has separate legal identity from its home state. This has ramifications for various facets of dispute resolution, including attribution, investor-State arbitration jurisdiction *ratione personae*, and sovereign immunity. In the context of investor-

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[129] ADIA, 'Governance' https://www.adia.ae/en/investments/governance accessed 3 June 2022.
[130] An abstract of the CIC's Articles of Association is available on the CIC website, at http://www.china-inv.cn/chinainven/Governance/Articles_of_Association.shtml accessed 3 June 2022.

State arbitration, an SWF's legal and investment structure, for example, can affect standing and jurisdiction.

Funds for Utilising Foreign Currency and Gold Reserves at Higher Yields

Even without sovereign wealth funds, every country has financial mechanisms for preserving its currency. Despite a country's enormous debt, the amount of protection they provide may be significant. Central banks are normally in charge of managing foreign currency reserves. The benefit of entrusting the management of foreign currency reserves to central banks is that they can use the reserves to influence the national currency's exchange rate, and it also makes international credit management easier (e.g., repayment, changing currency, hedging currency risks with futures or swaps).

However, little currency diversity (whether in terms of reserves or debt) only helped a bit with credit management, but it was unsuitable for supporting long-term economic interests. In the 1970s and 1980s, the Hungarian National Bank based its currency management policies on a very basic concept: get indebted in the currencies having the lowest interest rates at the time.[131] This monetary strategy, on the other hand, ignored the fact that currencies – based on the concept of interest rate parity[132] – were strengthening dramatically, causing the debtor – in this case, the Hungarian National Bank – to increase its outstanding loans. Before the financial crisis of 2007–2009, the general public and even businesses made the same mistake of taking out loans in foreign currencies, primarily Swiss francs (CHF), for which they paid a high price later.

Development Fund.

Development funds are one-of-a-kind hybrid structures that have characteristics with sovereign wealth funds. Development funds, according to Peter Clarke and Ashby Monk, are publicly-sponsored commercial investment funds that combine financial performance goals with development goals.[133] As a result, development funds, like sovereign wealth funds, help to boost the domestic economy by allocating governmental resources. Development funds are

[131] Gergely Szabó, A magyar államadósság keletkezése (1973–1989), 2016, 20–21 http://www.penzriport.hu/letoltes/Magyar_allamadossag_keletkezese_1973_1989.pdf. 20, 21(last accessed: 28 October 2021).
[132] Interest rate parity is the difference between the prompt exchange rate of two currencies and difference in their interest rate. It is used for determining the foreign exchange futures.
[133] Peter B. Clark/Ashby H.B. Monk, "Sovereign Development Funds: Designing HighPerformance, Strategic Investment Institutions" SSRN Electronic Journal (2015) 1, 3–4. https://dx.doi.org/10.2139/ssrn.2667974

used to buy shares in commercial banks, establish regional development institutions, and buy ownership in enterprises that provide government-backed loans. The operation of the aforementioned companies then becomes akin to that of a venture capital firm, offering refundable or non-refundable subsidies to enterprises that are achieving national economic goals.

The most noteworthy scenario is when the government purchases shares directly on a country's stock exchanges, as China and Japan did in 2015 and 2016. Obtaining the majority of shares in a stock exchange, which happened in Hungary in 2015, is an even more daring solution. The operation of development funds follows the same principles all around the world. They are run by state funds, but they lack a portfolio-based methodology and are primarily focused on local investments, therefore they cannot be considered sovereign wealth funds.

Sovereign Wealth Funds for Stabilisation

The goal of sovereign wealth funds for debt stabilisation is to redirect assets during economic booms to possibly recessionary periods, when they may fund the government's anticyclical programmes without adding to the national debt. Countries who lack natural resources and are thus in desperate need of imports may be able to use these cash to offset price increases in raw materials. Otherwise, debtor countries' deteriorating economies may not be able to finance their new demands, or if they can, it will be at a higher cost, further exacerbating the crisis.[134] As a result, reserves may be used more frequently and quickly.

During a crisis, the central bank may use monetary instruments, while the government may use fiscal instruments, either directly or indirectly, to execute anticyclical policies. The most well-known indirect monetary instrument is a series of interest rate reduction, which allows for increased liquidity in the financial system, whereas the monetary authority can directly purchase securities to increase liquidity on the markets.

The central bank's powers are defined in Hungary under Act CCVIII of 2011. The Monetary Council is the Hungarian National Bank's highest-ranking decision-making body. The Bank Rate is set by the Monetary Council. The council can meet at any moment, but its meetings

[134] See Zoltán, Zéman/Csaba, Lentner, "The Changing Role Of Going Concern Assumption Supporting Management Decisions After Financial Crisis", Polish Journal Of Management Studies, 2018, 428; Csaba, Lentner/Zoltán, Zéman, "A pénzügyi válság bankszabályozási controll elveinek meghatározóbb történeti elemei" Európai Jog 17 (2017), 8, 13.

are held monthly, and it is up to them to decide on monetary policies and their implementation. The central bank's board of directors is in charge of implementing monetary policies.

Only such a strategy can be justified as a rapid fix for acute liquidity issues. A state, on the other hand, can only rely on budgetary reserves to make long-term infrastructure investments in order to stimulate investment demand, enhance consumption, and increase employment rates. Significant fluctuations in raw material costs may necessitate involvement in the medium term; but, due to the factors outlined above, the investment duration of such funds will be shortened.

Wealth Preservation and Savings Funds

Countries short in raw materials or with conditions that limit agricultural production to a narrower geographic region understand the value of savings money. In the case of countries that rely heavily on export income, possibilities for establishing sovereign wealth funds primarily arise during periods of increased demand – and hence prices – for their products. Creating funds allows them to plan for the lean years that will occur as a result of the ensuing reduction in product, raw material, and resource prices. As a result, it's no surprise that countries that export raw materials are the most driven to save through sovereign wealth funds.

The need to create reserves is highlighted by the fluctuation in currency rates. Volatility and accessibility are important issues in the case of fossil fuels, because the pace of extraction of crude oil and natural gas vary depending on quarry site conditions. In addition, the extractability of previously discovered oil and natural gas reserves varies depending on market pricing. This issue arose during the 2015–2016 shale gas revolution, when the price of crude oil plunged from over USD 100 due to breakthroughs in extraction techniques. Fracking makes it possible to extract shale gas and oil from difficult-to-reach geological formations in the United States and Canada. However, oil prices below USD 50, and especially below USD 40, made such an enterprise unviable. As a result of the increasing supply, oil prices may stabilise at a lower level, resulting in the sale of significant oil corporation shares through Initial Public Offerings due to a shortage of reserves. This is similar to selling a "family heirloom," as these sectors were formerly owned privately by states (or national investors), who retained profits and control rights.

The aforementioned process began in Saudi Arabia in 2016, while the national oil firm was being prepared for privatisation. Saudi Arabia took steps to construct the world's largest sovereign wealth fund by restructuring the financial instrument reserves of the transactions, which had the desired effect. Saudi Aramco went public in April 2019 with the issuing of $30 billion in bonds to acquire money for an acquisition.

Two further categories of wealth preservation and savings funds can be distinguished. The first is inter-generational funds, which earmark and invest – partially or entirely – gains from successful (or, in Kiribati's case, lucky) economic variables for the benefit of future generations while keeping their yield. There are no restrictions on how the fund can be used in this situation, therefore disinvestments or new investments can be made depending on the state of the national budget.

The practise of non-generational funds (e.g., pension funds) that are unmistakably targeted is the polar opposite: their goal is to supplement present pensions for retirees. Non-generational funds have long-term aims as well, but unlike generational funds, they have ongoing payment commitments.[135]

A Different Kind of Sovereign Wealth Fund: The National Investment Authority

According to a study by Cornell University academics Robert Hockett and Saule Omarova, the creation of a National Investment Authority (NIA) is required to execute long-term investments, primarily infrastructure projects.[136] The authors argue the development of an NIA for two reasons: first, there is little market demand for long-term returns, and second, private money is focused on the short term. These two characteristics make it difficult to fund long-term initiatives like new roads and other infrastructure improvements.[137] Asset bubbles in financial and capital markets may result in recessions as a result of the latter. However, as the subprime mortgage crisis of 2007–2009 shown, recovery comes at a high cost. By establishing a creditor and investment subsidiary, an NIA may be able to solve both challenges by ensuring a demand for long-term investments, especially during a recession when private money might otherwise be scarce. A NIA's investment subsidiary would be similar to a sovereign wealth fund in that it would operate similarly and have similar purposes, with the state participating through government-sponsored firms (GSE).

[135] Supra note 123.
[136] Robert C. Hockett/Saule T. Omarova,“Private Wealth and Public Goods: A Case for a National Investment Authority,” Journal of Corporation Law 2018, 437.
[137] Ibid

The parallels with sovereign wealth funds imply a future-focused approach that fully addresses future generations' interests as well as the efficient, anticyclical utilisation of otherwise limited state cash. Thus, NIA's investment subsidiary might efficiently deploy capital investments to mitigate the consequences of a crisis, assist socially disadvantaged groups, and promote the economy's long-term development while simultaneously benefiting from the financial backing of a stable economy. Furthermore, the need for a new sovereign wealth fund might be supported by monetary policy limits, owing to the economic policy landscape created by zero-interest-rate policies. Another significant point that has to be answered is how such monies might be earmarked or created. It is important to note that the operations of such a new organisation must adhere to corporate governance rules, as well as the state's strategic engagement.

Hockett and Omarove have mentioned the idea of employing golden shares inside the EU's legal framework. Crisis management in industries with national economic relevance is one well-defined aspect of that. Because this would be a long-term investment, it would necessitate far fewer concessions for an exit following a listing than an NIA-style sovereign wealth fund would.

Dispute Resolution in SWFs.

SWFs are important economic actors in the global economy, participating in major cross-border acquisitions and corporate transactions in industries such as real estate, infrastructure, information and communication technology, and healthcare. Proceedings before national courts, commercial arbitrations, investment treaty arbitrations, and, to some extent, State-to-State conflicts before international courts and tribunals may all be involved in SWF disputes.

SWFs as parties to litigation before national courts.

SWFs have become more common as parties to domestic court issues, notably in contractual disputes, as a result of their rapid growth over the last 15 years. Domestic courts in different jurisdictions, including England and Wales, the United States, South Africa, Italy, Germany, and China, have considered this type of issue.

SWFs have been involved in a wide range of commercial conflicts, according to case law in England and Wales. These include anything from joint venture conflicts to cases for fraud or breach of fiduciary obligations, insolvency processes, and petitions for injunctive relief, as well as issues involving state enforcement. Recent conflicts regarding competing LIA director nominations are noteworthy. SWFs have been involved in at least two lawsuits, although not as plaintiffs or respondents: the cases were brought against and by those in charge of managing such SWFs.[138]

A considerable number of reported lawsuits concerning SWFs have been filed in US courts, the majority of which have been filed in federal rather than state courts. SWFs are both the claimant and the respondent in this case. Federal statutory claims for securities violations (and similar common law claims) arising out of alleged improper conduct (including by various financial institutions) in which the SWF may have invested are typical in cases featuring SWFs as claimants. Various investors and institutions, on the other hand, have sued SWFs for investments in or control of some subsidiary or related firms.

The Pembani Group Proprietary Limited v Shanduka Group Proprietary Limited case in South Africa involved the Competition Tribunal's approval of a merger including the purchase of a stake in a subsidiary of China's SWF China Investment Corporation.[139]

In the past, Italy has received considerable investments from sovereign wealth funds (SWFs). Mubadala Investment Company PJSC, the Qatar Investment Authority, and GIC Private Limited are among the[140] SWFs that have invested in Italy. The Italian Supreme Court heard a reported case regarding an SWF that came from the Italian authorities' criminal actions against LAFICO.[141]

In June 2016, NBIM (the company that manages Norway's GFPG) announced that it has filed a lawsuit against the Volkswagen Group in Germany's Braunschweig District Court.[142] The case is said to be part of a collective legal action brought by Volkswagen's institutional investors who suffered financial losses as a result of the Volkswagen Group's emissions

[138] Cf National Bank of Kazakhstan and another v Bank of New York Mellon SA/NV, London Branch and others
[2020] EWHC 916 (Comm); Ras Al Khaimah Investment Authority and others v Bestford Development Llp and others [2015] EWHC 3383 (Ch); Ras Al Khaimah Investment Authority and others v Bestfort Development LLP
and others [2017] EWCA Civ 1014

[139] Pembani Group Proprietary v Shanduka Group Proprietary Limited (LM041Jun15) [2015] ZACT 126, 18 September 2015

[140] Alessandra Puato, 'Fondi sovrani, zero soldi all'Italia nell'ultimo anno. «Non attira più»' (18 February 2019) Corriere della Sera https://www.corriere.it/economia/leconomia/19_febbraio_18/fondi-sovrani-grande-gelo-sovereign-investment-lab-bocconi-investimenti-qatar-0fc92eb2-335a-11e9-8ba2-1cae66b0283a.shtml accessed 3
September 2021.

[141] LAFICO v Public Prosecutor, Italian Court of Cassation, Criminal Division, Judgment, 11 October 2012, No 40093

[142] Cf NBIM, 'Volkswagen complaint filed' (24 June 2016) https://www.nbim.no/en/the-fund/news-list/2016/volkswagen-complaint-filed/ accessed 3 September 2021

crisis.[143] According to news reports, NBIM demanded EUR 680 million in damages.[144] It's unclear how the lawsuit progressed.

SWFs have been involved in a number of commercial issues in China's courts. These mostly consist of claims by Chinese SWFs relating to contract disputes, as well as requests for execution of CIETAC arbitration verdicts or Chinese court judgements in their favour. Employment conflicts, accusations for theft of funds from the SWF's bank account with a Chinese bank, and applications by a Singaporean SWF for review of the Chinese Trademark Review and Adjudication Board's judgement on trademark registration are all examples of such disputes.

SWFs as parties to international commercial arbitration.

Only a few publicly available commercial arbitration proceedings involving SWFs have been made public. Given that commercial arbitrations are often confidential, this is perhaps unsurprising. SWFs have been involved as both claimants and respondents in disputes involving diverse commercial transactions, according to cases available. A SWF (the LIA) successfully challenged the arbitral Tribunal's jurisdiction in at least one case, Al Kharafi v Libya.[145] The SWF's relationship with the State and the Government was examined in this case, which arose from a public contract arbitration agreement, to determine the scope of the arbitration agreement and whether the SWF was a proper ‘respondent' in the arbitration.

Despite the lack of publicly available information on international arbitrations involving SWFs, it is anticipated that in the future, SWFs will prefer to resolve disputes through international commercial arbitration rather than through local courts.

SWFs are subject to the same incentives that drive multinational corporations to employ international arbitration to resolve complex cross-border issues. International arbitration is widely regarded as having a high level of procedural confidentiality. This may be a crucial consideration in an SWF's decision to include an arbitration clause in a contract or enter into

[143] Ibid

[144] ‘Norwegischer Staatsfonds klagt gegen VW’ (24 June 2016) WirtschaftsWoche, https://www.wiwo.de/unternehmen/industrie/schadenersatz-fuer-dieselskandal-norwegischer-staatsfonds-klagt-gegen-vw/13786306.html accessed 17 August 2021; ‘Abgasskandal: Norwegens Staatsfonds klagt gegen Volkswagen’ (28 June 2016) Industrie Magazin https://industriemagazin.at/a/abgasskandal-norwegens-staatsfonds-klagt-gegen-volkswagen accessed 17 August 2021.

[145] Mohamed Abdulmohsen Al-Kharafi & Sons Co v the Government of the State of Libya and others, CRCICA,
Final Arbitral Award, 22 March 2013

a submission agreement to submit a dispute to arbitration that has already arisen, especially if the disagreement threatens the SWF's reputation.

SWFs may also employ international arbitration because they have faith in the adjudicators' specific capabilities (as well as their independence and impartiality), which the arbitration system will normally allow them to select. This could be yet another key consideration for SWFs considering investments in emerging markets – a growing trend in recent years, as indicated above – or states with security concerns.

SWFs as parties to investment treaty arbitration.

SWFs play an essential role in cross-border transactions in areas that may be regulated by the state in which the SWF invests. This is especially true of investments in regulated sectors such as the TMT and healthcare industries, which SWFs have increasingly targeted through direct investments in subsidiaries, private equity funds, or indirect investments in entities that own the target company in the host State. SWFs, like private companies or people, can use investor-State arbitration to file claims against host countries when they take actions that harm or destroy an SWF's investment.

In 1987, AAPL v Sri Lanka was the first known investment treaty arbitration under an IIA.[146] Only in 2010 was the first publicly available investor-State arbitration involving an SWF registered.[147] The State General Reserve Fund of the Sultanate of Oman ('SGRF'), a former Omani SWF (which no longer exists as its assets were transferred to the Oman Investment Authority in 2020),[148] initiated ICSID arbitration proceedings against Bulgaria in 2015.[149]

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[146] Asian Agricultural Products Ltd v Republic of Sri Lanka, ICSID Case No ARB/87/3. This data is taken from an early UNCTAD report (UNCTAD, 'Investor-State Disputes Arising from Investment Treaties: A Review' (February 2006) Doc UNCTAD/ITE/IIT/2005/4 https://unctad.org/webflyer/investor-state-disputes-arising-investment-treaties-review accessed 3 September 2021, The year ICSID registered the AAPL v Sri Lanka case can be found on the ICSID website' (ICSID, 'Cases database' https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/87/3 accessed 3 September 2021). There are earlier investor-State cases under contracts / host State's legislation such as, for example, Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt, ICSID Case No ARB/84/3

[147] Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Traiding Ltd v Kazakhstan, SCC Case No V 116/2010

[148] Cf IFSWF, 'Oman Investment Authority' https://www.ifswf.org/member-profiles/state-general-reserve-fund accessed 3 September 2021;
cf also OIA, 'About OIA' https://oia.gov.om/Index.php?r=en%2Fsite%2Fabout&csrt=7545915728545163519 accessed 3 September 2021

[149] State General Reserve Fund of the Sultanate of Oman v Republic of Bulgaria, ICSID Case No ARB/15/43; Luke E Peterson, 'Oman's Sovereign Wealth Fund is the latest claimant to try to hold a sovereign State – this time
Bulgaria – liable for losses tied to a bank failure' IA Reporter (23 October 2015) https://www.iareporter.com/articles/omans-sovereign-wealth-fund-is-the-latest-claimant-to-try-to-hold-a-sovereign-state-this-time-bulgarialiable-for-losses-tied-to-a-bank-failure/ (subscription required) accessed 3

The allegation is said to be related to the SGRF's ownership in Corporate Commercial Bank, a Bulgarian bank. Following that, the Claimant withdrew his claim.[150] According to reports, the Ras Al-Khaimah Investment Authority filed a case against India under the UNCITRAL Arbitration Rules in response to an alleged cancellation of a supply agreement under the UAE-India BIT.[151] The hearing has yet to take place[152], so the UNCITRAL tribunal's strategy has yet to be determined.

According to reports, the LIA has filed claims against a number of African countries. In a London-based arbitration, the LIA won a USD 380 million award against Zambia for nationalising Zamtel, a Zambian telecom company, in 2011.[153] It was also alleged that the LIA filed similar claims against Rwanda and Chad, among other African countries.[154] Following the eight-month-long struggle that ended Muammar Gaddafi's forty-year rule, the LIA contends in these proceedings that these States took advantage of "Libya's political crisis to nationalise assets belonging to the country's USD 66 billion sovereign funds."[155] However, based on the limited information available on these instances, it is unclear whether they were investment treaty-related processes or purely commercial disputes referred to arbitration by the LIA under to contracts negotiated with the relevant host States.

As of 2021, the few recorded cases involving SWFs as claimants against host states demonstrate SWFs' limited usage of investor-state arbitration. This could indicate that SWFs prefer to rely on diplomacy in some circumstances, emphasising the private/public duality of SWFs. However, because to their rising global investments, increased awareness of investor-

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September 2021; Lisa Bohner, 'Arbitrators render final award, months after Bulgaria announced end of claim by Oman's sovereign wealth fund' IA Reporter (19 August 2019) https://www.iareporter.com/articles/arbitrators-render-final-award-months-after-bulgaria-announced-end-of-claim-by-omans-sovereign-wealth-fund/ (subscription required) accessed 3 September 2021.

[150] State General Reserve Fund of the Sultanate of Oman v Republic of Bulgaria, ICSID Case No ARB/15/43, Award (excerpts), 13 August 2019, para 38.

[151] Cf Zoe Williams, 'Emirati investor files UNCITRAL BIT arbitration against India', IA Reporter (12 January 2017) https://www.iareporter.com/articles/emirati-investor-files-uncitral-bit-arbitration-against-india/ (subscription required) accessed 3 September 2021; Jarrod Hepburn, Luke E Peterson and Ridhi Kabra, 'India round-up: Updates on five pending investment treaty arbitrations, including rulings (on liability in Deutsche Telekom case), tribunals and anti-suit injunctions' IA Reporter (21 March 2018) https://www.iareporter.com/articles/india-round-up-updates-on-five-pending-investment-treaty-arbitrations-including-rulings-tribunals-and-anti-suit-injunctions/ (subscription required) accessed 3 September 2021.

[152] Jarrod Hepburn, 'India round-up: Update on seven investment treaty cases against the State' IA Reporter (11 June 2020) https://www.iareporter.com/articles/india-round-up-an-update-on-seven-investment-treaty-casesagainst-the-state/ (subscription required) accessed 3 September 2021.

[153] I-Arb Africa, 'Zambia pays first installation of 380 million USD award' (2 June 2017) https://www.iarbafrica.com/en/news-list/17-news/544-zambia-pays-first-installation-of-380-million-usd-award?utm_source=ActiveCampaign&utm_medium=email&utm_content=I-Arb+Weekly&utm_campaign=I-Arb+Weekly-2018-5 accessed 3 September 2021.

[154] Ibid

[155] Ibid

State arbitration, and possible conflicts, SWF participation in investor-State arbitration will undoubtedly increase in the future.

The choice of an SWF to initiate investor-State arbitration proceedings against a host State under an IIA raises the question of what conditions an SWF must meet in order to participate as a claimant and protect its investment. This includes whether an SWF is a protected investor and has a protected investment.

SWF's and WTO

Settling WTO disputes is the responsibility of the DSB, which consists of all WTO members. Unlike investor-state arbitration, only States can file a complaint with the DSB.[156]

Several trade conflicts involve private acts that are linked to or endorsed by the government. 'Sufficient government involvement,' according to one panel, is the deciding factor in whether a private activity can be considered a governmental 'measure.'[157] As a result, if an SWF is closely related to or administered by government officials, it may have sufficient government engagement to participate in WTO dispute resolution. However, it is doubtful that an SWF's conduct would result in a trade dispute with the SWF's home country.

The GATS may be used by an SWF that is a service provider in a host State. The GATS requires that a service supplier of a Member State, including governmentally controlled legal entities[158], have a 'commercial presence' in order for its provisions to apply.[159] Some SWFs may be included in the scope of these rules. However, the extent of governmental jurisdiction over the SWF in question will determine this. 'Services offered in the exercise of

[156] The DSB has the sole authority to establish 'panels' of experts to consider the case and to accept or reject the Panel's findings or the results of an appeal. See DSU, Article 2(1). It follows that private individuals or companies
do not have direct access to the dispute settlement system, even if they may often be most directly affected by the measures allegedly violating the WTO Agreement. However, there can be instances in which certain private behaviour has strong ties to some governmental action. Whether this can be attributed to the Member, and therefore is actionable under the WTO, will depend on each case

[157] Cf WTO, Japan – Measures Affecting Consumer Photographic Film and Paper – Panel Report, WT/DS44/R, 31 March 1998, para 10.56.

[158] Cf GATS, Article XXVIII(g) defines 'service supplier' as 'any person that supplies a service'; Article XXVIII(j) defines 'person' as 'either a natural person or a juridical person'; and Article XXVIII(l) defining 'juridical person' as 'any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association'.

[159] GATS, Article XXVIII(d) ('" Commercial presence" means any type of business or professional establishment,
including through (i) the constitution, acquisition or maintenance of a juridical person, or (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service')

governmental authority,' defined as 'any service supplied neither on a commercial basis, nor in rivalry with one or more service suppliers,' are expressly excluded from the scope of the GATS' application.[160]

Furthermore, the GATS will only apply where the service provider owns a controlling stake in the juridical entity in the host Member State that has been impacted by the disputed measures.[161] As a result, depending on the corporate structure, an SWF may be afforded the guarantees and protections provided under the GATS, subject to the GATS' exemptions and any limits or restrictions set out in the schedule of the host State's specific commitments,[162] an SWF may be afforded the guarantees and protection This includes situations where the SWF owns a majority and controlling stake in a local company or has a branch or representative office offering commercial services in a protected sector in competition with other service providers in the host Member State[163] within a protected sector.[164] Treatment no less favourable than that provided by the host State to like services and service suppliers of any other country[165] or its own nationals[166], and no less favourable treatment in terms of market access in the host State are examples of such guarantees and protections.[167]

If an SWF fits all of the above criteria and the host State takes any action that violates the SWF's obligations and particular commitments under the GATS, the SWF's home State may file a complaint with the DSU against the host State.[168]

If a host Member State of the WTO violates an SWF's intellectual property rights, the SWF may seek to rely on the principles of the TRIPS Agreement. The TRIPS Agreement stipulates that a host State must provide minimum standards of intellectual property protection to

[160] GATS, Article 1.3(b) and (c).

[161] To meet the requirement of a commercial presence through the formation, acquisition, or maintenance of a juridical person in the host Member State, the service supplier from the other Member State must have more than 50% beneficial equity interest in the company and a controlling interest with the power to 'name a majority of its directors or otherwise legally direct its actions' (cf. GATS definition of 'juridical person').

[162] Cf, for example, GATS, Article XIV on General Exceptions, i.e. to protect public morals or to maintain public
order, to protect human, animal or plant life or health, to secure compliance with laws or regulations which are not inconsistent with the provisions of the GATT, to ensure the equitable and effective imposition or collection of direct taxes, or for the avoidance of double taxation. Cf also Article. XIV on Security Exceptions; Annex on Article II Exemptions.

[163] Ie where the SWF's do not fall within the definition of 'services supplied in the exercise of governmental authority' under Article 1.3(b) and (c).

[164] Ie in the sectors where specific commitments are undertaken by the host Member State in its Schedule of Specific Commitments (cf GATT, Article XX)

[165] GATS, Article II.

[166] GATS, Article XVII

[167] GATS, Article XVI. Such guarantee is afforded under the terms, limitations and conditions agreed and specified in the host Member State's Schedule.

[168] GATS, Article XXIII.

natural or legal persons from another Member State if they meet "the criteria for eligibility for protection provided for in the Paris Convention (1967),[169] the Berne Convention (1971),[170] the Rome Convention[171], and the Treaty on Intellectual Property in Respect of Integrated Circuits," which is fairly broad.[172] As a result, as long as an SWF has TRIPS-protected intellectual property rights that have been violated by another Member State, its home State may send the case to the DSU's dispute resolution processes on its behalf.[173]

Importantly, no damages would be granted to the home state or SWF in question as a result of any WTO dispute resolution process, whether for breaches of the GATS, TRIPS, or any other WTO agreement. The WTO panel and appeal body, on the other hand, may recommend that the host State bring "the measure into compliance with [the] agreement"[174] and identify ways in which the host State concerned "might execute the suggestions."[175] Compensation and concession suspension may also be proposed in specific cases as "temporary measures available if the recommendations and rulings are not implemented within a reasonable time."[176]

[169] The Paris Convention for the Protection of Industrial Property ((adopted 20 March 1883, entered into force 7 July 1884, as amended) 828 UNTS 305) extends protection to all 'Nationals of any country of the Union,' without imposing any requirements regarding domicile or establishment in the country where protection is claimed for the enjoyment of any industrial property rights (cf Article 2(1) and (2)). 'Citizens of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments on the territory of one of the Union's countries must be treated in the same manner as nationals of the Union,' according to Article 3 of the Paris Convention.

[170] The Berne Convention for the Protection of Literary and Artistic Works ((adopted 9 September 1886, entered into force 5 December 1887, as subsequently amended) 828 UNTS 221) in Article 3(1) affords protection to '(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not; (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union'. It also extends protection to in Article 3(2) to 'Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country'.

[171] The International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations (Rome Convention) (adopted 26 October 1961, entered into force 18 May 1961) 496 UNTS 43) provides similar protection to producers of phonograms under Article 5 on the basis of nationality, fixation, and production; and protection to broadcasting organisations under Article 6 if (a) the broadcasting organization's headquarters are located in a not-for-profit organisation, and (b) the broadcast was transmitted from a transmitter
situated in another Contracting State.

[172] TRIPS Agreement, Article 1(3).

[173] Cf WTO, 'Overview: the TRIPS Agreement' https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed 3 September 2021; TRIPS Agreement, Article 64(1).

[174] DSU, Article 19(1)

[175] Ibid

[176] Ibid, Article 22

Conclusion.

As seen by national regulations limiting foreign investment screening, states receiving SWF investments have increasingly resisted the growing economic power and influence of SWFs. "Expanding the scope of screening is in part... a reaction to the rising investment activity of foreign State-owned or -controlled firms and sovereign wealth funds," according to UNCTAD. As a result, several authors have noticed a rise in the use of investment screening as a policy instrument, especially in industrialised nations.

Due to national security concerns, when an SWF tries to purchase majority shareholdings, such a deal may be treated with caution by national screening authorities. The regulations of the SWF's native state and the designated host state may differ. Normally, regulation at the host state level is the focus, particularly when it comes to national security concerns.

CHAPTER FIVE: THE NATIONAL FRAMEWORK GOVERNING THE UGANDA NATIONAL PETROLEUM FUND.

Introduction.

The Petroleum Revenue Investment Reserve (Uganda Petroleum Fund) is a Sovereign Wealth Fund based in Kampala, Uganda. Uganda Petroleum Fund's current assets are $120,541,000, while SWFI has five periods of historical assets.[177]

Aside from the anticipated benefits of the oil sector in terms of employment and business opportunities for Ugandans, investment capital, and abundant fuel for electricity generation, the industry's major potential benefits lie in the revenue streams paid by companies and the sale of oil once production begins. According to current estimates, oil revenue could double Uganda's revenue base in six to ten years, allowing for unprecedented public spending on infrastructure, economic productivity-enhancing measures in key sectors like agriculture, quality education, health, water and sanitation service provision, local government capacity, and town and urban planning. Given what has happened in other oil-rich countries, these potential benefits may not materialise unless there is a clear and precise framework in place to ensure that revenues are properly managed for current and future generations.[178]

Section 56 of the Public Finance Management Act (PFMA), 2015, as amended, established the Petroleum Fund (Fund). All revenues flowing to the government from petroleum and related operations are deposited in the Fund. Appropriations to the Consolidated Fund or the Petroleum Revenue Investment Reserve Account are used to make payments from the Fund.

The Petroleum Fund has three bank accounts, two of which are held by the Bank of Uganda. The third one, at the Federal Reserve Bank of New York, opened on June 23, 2017, to encourage investment under the Petroleum Revenue Investment Reserve. The two accounts at the Bank of Uganda are denominated in UGX for local currency deposits and USD for transactions denominated in US dollars.

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[177] https://www.swfinstitute.org/profile/598cdaa60124e9fd2d05bb27 accessed 7th June, 2022.
[178] International Alert, Uganda. 2011, Oil and Gas Laws in Uganda: A Legislators' Guide, available at; https://www.international-alert.org/wp-content/uploads/2021/09/Uganda-Oil-Gas-Laws-Legislators-Guide-EN-2011.pdf accessed on 7th June, 2022.

Background.

During 2006, exploration activity in the Albertine Graben proved the existence of commercial-scale oil deposits in Uganda. Based on estimated reserves of 2.5 billion barrels, oil production could be maintained at roughly 150,000 barrels per day for 20-25 years. For the next 20 years, production at current levels would equal 1,095 million barrels. The country has since moved on to the following phase, which includes assessment, development, and production, as a result of this finding.

The rise of oil and gas resources brings with it both benefits and challenges. The main benefit is that oil and gas earnings are generated as a result of the finding of a sub-soil asset – a "gift from nature." The finding of oil and gas resources is predicted to increase the government's wealth, resulting in increased economic growth and development in the country.

However, past experience has shown that oil profits can pose problems, particularly if they are not carefully handled. The fundamental challenge is how to avoid sliding into the 'resource curse' trap, a complicated phenomena in which oil and gas profits can lead to economic stagnation and waste through a variety of economic, institutional, and political economics transmission channels.

The "Dutch Disease" phenomenon, which refers to a set of unfavourable macroeconomic impacts generated by a big increase in resource–funded spending, is one of the transmission mechanisms. Large increases in expenditure, if directed primarily at domestically manufactured goods, might raise domestic prices, causing the nominal and real exchange rates to gain. This frequently results in a movement of capital and manpower into the production of nontraded items, eroding the non-resource economy's competitiveness.

The extraordinary volatility of oil and gas earnings, which can lead to wastage, boom and bust cycles, and excessive borrowing, is a second transmission mechanism of the resource curse. Wastage occurs as a result of pressure to increase spending beyond the economy's ability to execute it, resulting in low-quality initiatives. It could also come from frequent upward and downward adjustments in spending (in response to unpredictable revenue inflows as a result of volatile price movements) and, as a result, have an impact on government spending plans. Excessive borrowing stems from the idea of predicting future oil booms, which is then utilised as a basis for securing loans.

The fact that resources are generated by depleting a non-renewable nonfinancial asset, such as oil and gas, results in a third transmission mechanism. Because these earnings are non-renewable, they can be deemed to be obtained from the use or sale of an existing asset rather than extra income, regardless of their source. As a result, such income is unsustainable. As a result, a strong fiscal framework must be established to cover all aspects of oil and gas revenue collection, usage, savings, and investment in such a way that the achievements made in economic and fiscal management over the last 20 years are not reversed.

Establishment of the Petroleum Fund.

Oil and gas revenues, like all other government receipts, should be placed in the Consolidated Fund's revenue account and allocated according to the standard budgetary process. However, (i) given the complexity of accountability for multiple petroleum revenue streams (ii) and to provide an easy and transparent way to present and manage the stocks and flows of oil revenues, as well as the anticipated challenges that management of these revenues poses, the resources must be managed under a transparent and segregated arrangement distinct from the Consolidated Fund. The actions and revenues defined in the PSAs must be included under the applicable laws.

The Petroleum Fund was formed in the Bank of Uganda and is managed on behalf of the government by the Ministry of Finance, Planning, and Economic Development. The Fund is a "funding fund" that aims to achieve the following goals:

a) Budget Financing

b) Provide for Future Generations' Savings

Deposits and Withdraws from the Fund.

All proceeds from oil taxes, non-tax revenues, and any profits obtained through the sale of the government's share of profit oil received in kind will go to the Petroleum Fund. Payments must be made by electronic transfer directly to the Petroleum Fund by the entity that bears the payment responsibility, in order to increase transparency.

Withdrawals from the Fund will be decided in the annual budget and will be used to cover the budget's non-resource deficit. The withdrawal of funds from the Fund will be governed by set rules. Most crucially, the withdrawal shall be limited to I paying the nonresource budget deficit and (ii) future generational savings. The amount of withdrawal each year will be moved from the Petroleum Fund to the Consolidated Fund, as defined by the budget process.

To maintain accountability and minimise misuse, any authorisation of larger than budgeted withdrawals from the Fund shall be subject to transparent and strict conditions. To avoid the creation of parallel budgets, the earnings from the Petroleum Fund will not be utilised to fund any initiatives that are not part of the government's budgeting system. Any domestic expenditure of petroleum resources must be included in the MTFF/MTEF and must be approved by Parliament.

Asset Management Practices.

After deducting the amount required for budget financing, the remaining revenues in the petroleum revenue holding account will be transferred to the Petroleum Fund's petroleum revenue investment reserve. The investment reserves will be put to work according to a pre-determined investment strategy. The Ministry of Finance, Planning, and Economic Development will be in charge of developing the Petroleum Fund's investment strategy. Within the Ministry, the department in charge of government assets will collaborate closely with the new Petroleum Fund's governance structures. However, the agency will not be responsible for direct investments, which will be handled by the Central Bank.

The management of the Fund's balance will be integrated into the framework of government assets and liabilities. The Fund's balance sheet will be merged with other government financial activities into a statement of assets and liabilities, which will be audited and reported to Parliament within a certain time frame. Information on the public debt and asset liability status must be included in the statement.

The Governance Concept.

The success of natural resource funding management hinges on good governance, skilled management, and oversight. To prevent the'resource curse,' these will be the qualities that will be stressed.

In terms of governance, the Ministry of Finance, Planning, and Economic Development will have overall ownership and control of the Petroleum Fund (MFPED). The Central Bank will manage the Fund on behalf of the government. Parliament and the Auditor General will be in charge of oversight.

Responsibilities of the Minister of Finance.

The MFPED will have the following responsibilities:

1. Create an Investment Advisory Committee.

2. Through the Investment Advisory Committee, exercise ownership and control over the Petroleum Fund.

3. Provide the Central Bank with strategic investment guidelines/benchmarks.

4. Create the Fund's management contract.

5. Keep track of the Fund's overall performance.

6. Publish a periodic report to Parliament on the Fund's performance.

A Department of Asset Management will be established within the Ministry of Finance, with the primary function of coordinating the activities of the Petroleum Fund.

Responsibilities of the Investment Advisory Committee

The Petroleum Investment Fund's activities will be overseen as a primary duty. This will entail the following:

1. Developing a broad investment policy.

2. Establishing the fund manager's reporting requirements

3.Subject to independent audits, reporting on the fund's governance on a regular basis to the Minister responsible for Finance and the public.

4. Establishing ethical guidelines and standards for the handling of investment funds

Responsibilities of the Central Bank

Bank of Uganda will be the Fund manager, and will be responsible for the operational management of the Petroleum Fund on behalf of MFPED, in accordance with the Oil and Gas Policy.

1. Implementing an agreed-upon Investment Strategy;

2. Establishing appropriate institutions to manage the Petroleum Fund will be the main tasks.

3. Manage the Fund actively in order to get a reasonable return;

4. Risk management and reporting;

5. Provide professional investment plan advice; 4. Risk control and reporting

6.Report on the performance of the Fund on a quarterly basis to the Investment Advisory Committee.;

Investment of the Petroleum Fund Proceeds

The Petroleum Fund will invest in low-risk, well-diversified investment portfolios around the world. This will reduce the risk to these resources while also ensuring their availability in the event that they are required to cope with domestic situations. Furthermore, investing a considerable amount of petroleum revenues abroad reduces the danger to the economy posed by huge foreign exchange inflows resulting in domestic expenditure. To ensure prudent management, however, all investments made by the Petroleum Fund must follow the investment policy established by the Petroleum Fund Investment Advisory Committee.

Oversight and Controls

To guarantee that oil and gas earnings are transparent, the collection, management, and use of all oil income must be subjected to detailed scrutiny as required by the Constitution, the National Audit Act, and other relevant public financial management regulations.

Petroleum Fund Investment Advisory Committee

A Petroleum Fund Investment Advisory Committee will provide technical guidance to the Petroleum Fund Investments management team. The Committee will be made up of five members, including the Secretary of the Treasury, and four others who will be selected by the Minister of Finance. These individuals must have a notable service record, be of undoubted integrity, and have proved proficiency in fund management and investment disciplines.

Petroleum Fund Audit

The Petroleum Fund will be audited twice a year by the Auditor General, who will then present reports to Parliament. Following the completion of the audit exercise, the results of these audits will be made available to the public within a specified timeframe.

Financial Reporting and Accountability

Reporting on the oil and gas sector's activities must contain data on resource reserves, production costs, realistic world price estimates, extraction and depletion rates, fiscal regime, and contribution to the government's wealth. To determine if oil output is being depleted in a sustainable manner, it is necessary to account for oil reserves and their decline. The accounting of oil reserves helps to put the country's resource wealth into perspective and discourages overly broad fiscal and borrowing strategies.

The Investment Advisory Committee must create quarterly reports on the Petroleum Fund's operations in accordance with the regulatory framework and submit them to the Auditor General. The reports will then be presented to Parliament and made public within a certain time range.

Transparency

All parties involved in the management of oil and gas income must adhere to the greatest standards of transparency, according to the policy. Only when it is proven that specific information should be maintained as secret will the applicable laws ensure that transparency measures are in place and that public information is freely accessible. This policy will require reporting requirements to comply to internationally recognised best practises, in addition to strengthening the institutional, legal, and regulatory frameworks. Once the appropriate laws have been revised, Uganda will be able to join global transparency forums such as the EITI.

Encumbrances

The Petroleum Fund's assets are owned by the Ugandan people and held by the government on their behalf. These assets may not be encumbered in any way, including through a guarantee, security, mortgage, or any other type of encumbrance. The public finance law will clearly state this necessity.

Conclusion.

Petroleum revenues and their administration, unlike other sources of revenue, present both potential and policy issues. On the one hand, the development of oil and gas resources will boost the government's net wealth. These income, on the other hand, can provide major issues, particularly if they are mismanaged. The major policy issue will be to avoid the so-called resource curse, a situation in which oil and gas earnings are translated into economic stagnation and waste through a variety of economic, institutional, and political economics transmission channels.

CHAPTER SIX: FINDINGS, CONCLUSIONS AND RECOMMENDATIONS.

Conclusion.

During the exploitation of a country's petroleum resources, the fiscal system balances the interests of both the HG and the Investing oil company. It should not only protect the HG's interests, but also give the IOC incentives. It is also clear that, despite the diversity of petroleum fiscal systems, they may all be designed to provide the same amounts of resource rent. Many academics have looked at the efficiency of different regimes in terms of optimality, adaptability, sustainability, neutrality, and equitability.

Because the extraction of petroleum resources incurs such high expenses, both the government and IOC place a high value on their recovery and timeliness. Cost management, like prices and reserves, will affect the profitability of a project regardless of the type of system. PSCs, in example, provide a cost recovery procedure that allows corporations to recover a set amount of expenditures per period while simultaneously ensuring that the government receives a share of the production. However, there has been a slew of evidence of disputes in which HG and activists have claimed that IOCs falsify expenses or bring ahead expenditures in order to postpone or cut government revenues.

In its 2016/17 household survey, the Uganda Bureau of Statistics recorded an increase in poverty for the first time since its inception in 1998. Growth in real per capita terms has been stagnant, averaging around 1% from 2012 to 2016, while the government's revenue take has only modestly improved to just over 13% of GDP. Debt levels have rapidly risen. In order to make the most of the limited economic resources available, infrastructure has been prioritised over service delivery, and the quality of service delivery has stopped or worsened. Large sections of the service delivery system are being funded by development partners, which the government is becoming less interested in. In light of these trends, windfall profits from natural resource extraction could provide Uganda with much-needed fiscal relief.

The government has built a new policy and institutional framework with the purpose of enhancing growth and structural transformation through controlled infrastructure investment in an attempt to convert natural resource assets into productive assets. The established structure, which is based on the Norwegian model, stipulates that revenues go into the Petroleum Fund first, then be used either to pay a maximum deficit of 3% of non-oil GDP or to invest in the sovereign wealth fund. When domestic investment absorption is at capacity and/or signs of Dutch disease appear, the sovereign wealth fund is intended to store revenues abroad.

Despite pressing requirements, the oil sector's development has been slow—much slower than many outside and inside the government expected. Whether on purpose or not, the Ugandan government appears to have done an excellent job of sequencing policy, law, institutional, and commercial development thus far. Uganda is taking its time preparing for the onset of earnings, especially when compared to other African oil producers such as Ghana, which went from discovery to production in under two years. However, we discovered a number of flaws in the structure in place that, if left untreated, may become troublesome. These include a lack of clarity in managing volatility, a failure to separate revenue management from the political cycle, ambiguity about revenue allocation to local governments, and a continuing lack of openness. Weaknesses in public investment management generate more worries about the proposed investments' revolutionary potential.

It's crucial to remember that these aren't just technical issues, and that the political will to enhance governance will ultimately determine the economic gains that the resource boom will bring. Due to the modest size of the private sector in economies like Uganda's, the government plays the most important role in capturing the advantages of a natural resource boom.

As Uganda moves closer to commercial oil production and thus joins the Organization of Petroleum Exporting Countries (OPEC), she is confronted with the complex issue of oil revenue management and sharing, which now necessitates an effective legal regime to assure proper oil revenue management. Regardless of the manner Uganda may adopt in allocating its oil earnings, the following essential standard principles should be taken into account: I distributional principles; (ii) a consistent energy strategy; (iii) compensation to producing areas for production expenses; (iv) fiscal accountability; and (v) national and regional/local economic stability.

The temptation to spend the oil cash stream may become great for a developing country like Uganda, especially during periods of high prices.

a) As Uganda enters the phase of commercial oil production, it is critical that it: a) broadens its economic base to prevent becoming overly reliant on oil sector earnings; this will protect Uganda from the typically severe revenue fluctuations associated with the oil sector. In the event that the oil industry is harmed in some way, it is critical that other government sectors such as manufacturing and agriculture continue to generate cash to fund government operations. The problem is to encourage other areas of the economy to ramp up production, which necessitates smart planning to keep those industries afloat.

b) Managing price volatility: The oil industry is notorious with price volatility. To deal with this, successful countries set up a stabilisation fund that helps to smooth things out over time. While this is beneficial, there is a possibility of a parallel budget system emerging, particularly in poorer countries. The Norwegian success story can be summarised as follows: I all oil fund resources are reported to parliament, (ii) parliament allows any transfers from the fund to the budget, and (iii) all expenditure is done from the normal budget..

c) Saving: Because oil is finite, it is critical to establish a savings fund to address concerns that will affect future generations. Spending from that fund must be extremely limited, to the point that it requires a parliamentary decision to access it.

d) Developing a sharing formula and mechanism: this is extremely important and should be done as soon as possible. By the time production begins, an agreed-upon mechanism for ensuring equal benefit to oil-producing and non-oil-producing regions should have been developed.

e) Local stakeholders were consulted. Appropriate talks with the many stakeholders who are likely to be impacted by oil production activities are required. If this is not addressed, disputes will arise, interfering with production efforts on a regular basis. It makes no difference whether or not they have legal tenure at this time, as long as they are expected to be impacted by oil production activities. It is vital to implement a clear mechanism for incorporating their opinions into the decision-making process and providing appropriate pay if warranted. Papua New Guinea's development forums are a good example.

f) Assessing institutional capacity is critical to the success of oil wealth management, which is based on good governance, which necessitates the establishment and proper management of relevant institutions at both the national and local levels. Continuous assessments and improvements should be carried out and implemented, and any capacity deficiencies should be remedied as soon as possible.

g) Benefits are being offered. This must be done in a way that benefits the recipients and is not prone to mismanagement. While some critics advocate for cash transfers to beneficiaries, it is maintained that providing benefits in the form of productive infrastructure such as roads, water, energy, health, and sanitation is the best way ahead. While financial transfers can help reduce existing poverty, they are just temporary and will leave communities in poverty in a short period of time.

h) Organizational structures and priorities It is critical that the government establishes a management structure with complete control over how the trust money is spent. This strategy succeeded in Botswana and should work in Uganda as well. This will aid in the identification of priorities and expenditures in order to ensure effective budget usage and development.

i) Assessment of Environmental Impacts This is one of the most serious consequences of oil extraction. It could be the result of bad management or a mishap. As a result, it is critical that we conduct an assessment to: I identify the possible victims and how to compensate them in the case of a pollution; for example, setting compensation parameters and liability responsibilities. (ii) to ensure that the environmental costs of oil production do not outweigh the predicted benefits, and (iii) to design and implement mitigation and enforcement mechanisms. Environmental taxes and other revenue-raising measures can be used to ensure that the costs of environmental harm are internalised. A liability fund, which forms a resource pool to cover the government's expected clean-up costs or health-care costs.

j) Maintaining the fiscal consolidation strategy. This entails planning for the future once the oil resource has been depleted and earnings from oil have ceased. This necessitates economic diversification through investments in other long-term assets and the development of capacity to maintain the country's economic balance after oil income cease. To avoid contracting the 'Dutch Disease,' some oil revenue management techniques have been proposed.[179] These include;

i. Appropriate agreements to ensure that the host country gets the most out of its resource endowments.
ii. Regulation of the economy in order to maintain a favourable foreign exchange rate and accumulate surpluses.
iii. Transparency and excellent budgetary procedures are promoted.

179 Sarraf Maria, & Moortaza Jiwanji. (2001). Op cit.

iv. Prioritizing the development of public infrastructure and human capital Human capital is an investment.
v. Fair distribution of resource riches among the people, with specific attention paid to the afflicted communities.
vi. In the event of the ever-present price volatility in the oil market, a stabilisation fund should be established to smooth the economy.
vii. Preventing corruption and the misappropriation of funds.

Credible oil income sharing plans are commonly seen as critical for promoting long-term growth. Norway and Botswana are two countries that have shown how natural resources can help a country thrive. The United Nations Development Program's list of the greatest performers using proceeds from oil resources, for example, ranks Norway first. Norway's success indicates that the economic and social problems associated with natural resources are not inherent; rather, it is how each country conducts its affairs that decides whether the end result is a blessing or a punishment.

The quality of public policy, legal framework, and public accountability will ultimately determine whether countries are able to convert their oil riches into long-term advantages for their citizens. Simply put, with the correct policy, legal, and public accountability frameworks in place, petroleum income can be "black gold" rather than a curse. Before oil production begins, Norway and Botswana should encourage Uganda to build robust revenue-sharing structures. We're doomed without them.

Recommendations.

Parliament and civil society organisations have a role to play in overseeing the PF's operations: Despite the fact that Parliament has the power to disburse PF resources through the appropriate legal framework, it has no authority over the Fund's operations or the use of those funds. The framework should also establish an expenditure cap/ceiling on petroleum income transferred to the Consolidated Fund in order to avoid two issues: (a) overdrawing the Petroleum Fund; and (b) appropriating large sums of money that would end up in the economy, causing inflationary tendencies. To avoid choking the economy, prudent macroeconomic tendencies should be prioritised.

A supporting legal framework for EITI implementation and petroleum revenue transparency: If the Government of Uganda is to become EITI-compliant, the PFMA,[180] and regulations, the Petroleum Revenue Management Policy[181] will need to include details to set the government up for compliance. In some cases, the PFMA will need to be amended to accommodate EITI principles and standards such as disclosing revenues on a project-by-project, company by-company basis, disaggregated by payment type. This will bring Uganda closer to compliance with the EITI standards.

On the Heritage Oil case, the government should keep track of and report on payments of CGT balances. It should be highlighted that the government is still owed payments in this case, but it is unclear when they will be made. As a result, follow-up is required. If the company fails to pay on time, the PFMA's provision 57(3) should be used.

The appropriation should specify the actual sources of monies allocated to the CF as well as how they will be used. If this is not clarified, politicians may take advantage of the gap and divert cash from the PF to non-development programmes, thus breaking the law.

The government should complete the framework for the Petroleum Revenue Investment Reserve Policy and the Investment Advisory Committee's Terms of Reference (IAC). If this is not done, money will be unable to be appropriated for investment as required by the PFMA. The PRIR policy framework and TORs for IAC have not yet been established four years after the establishment of the Petroleum Fund, and the committee has only recently been established. This means that, despite the fact that the IAC has been established, it has no work to accomplish until the policy and TORs are written and approved by the appropriate authorities.

Establish social safeguards and controls for the Petroleum Fund, such as giving parliament and civil society organisations more authority to oversee the fund's management. Others include: (a) requiring members of the Investment Advisory Committee to reveal their financial interests in the oil and gas industry. Failure to do so creates a loophole for conflict of interest in the fund's management; (b) ensure strict adherence to set protocols, laws, and procedures for proper oil revenue management; and (c) develop and publish an annual petroleum revenue utilisation plan, which should be approved by parliament to avoid ad hoc oil revenue expenditures by the government.

[180] 2015
[181] 2012

To comply with the EITI, the government should establish an independent, multi-stakeholder monitoring panel to oversee transfers into and out of the PF, as well as the infrastructure projects for which they are appropriated, as well as all of the PF's primary activities. This body should include government officials, business leaders, and civil society members who are fully autonomous, active, and effective. The Auditor General's audits of the PF should be reinforced by independent third-party audits.

Uganda's government should likewise agree to making contracts public and publishing petroleum earnings in accordance with PFMA and EITI regulations. In addition to being included in the PF's semi-annual and annual reports, certain information should be made publicly available in media and on the Ministry's website. This will assure successful administration of the oil and gas business by establishing a legal framework that strives to create a system that can effectively handle oil earnings.

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