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COLLEGE OF LAW AND GOVERNANCE STUDIES
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Business Law Stream

The Legal Framework of Ethiopian Investment Holdings (EIH)

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Advisor: Dr. Martha Belete

June, 2023

Addis Ababa, Ethiopia

Title Page

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Approval Page

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Declaration

I certify that this study, entitled The Legal Framework of Ethiopian Investment Holdings, is my work. All of the data in this document has been obtained and presented in accordance with academic rules and ethical conduct. This study has not been submitted for award of any degree or diploma program at this or any other institution. I have fully cited, acknowledged, and referenced all material and results not original to this work.

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Acronyms and abbreviations

- **AUM :** Asset under management
- **EIC:** Ethiopia Investment commission
- **EIH:** Ethiopian Investments Holdings
- **EIHER:** Ethiopian Investments Holdings Establishment Regulation
- **FDRE:** Federal Democratic Republic of Ethiopia
- **FDI :** Foreign Direct Investment
- **GAPP:** General Accepted Principles and Practices
- **GDP:** Gross Domestic Product
- **GOE :** Government of Ethiopia
- **GTP :** Growth and Transformation plan
- **HPR:** House of Peoples’ Representatives
- **IFSWF :** International forum sovereign wealth fund
- **IMF:** International Monetary Fund
- **IWG** International Working Group on Sovereign Fund
- **PEHAA:** Public Holding Enterprise and Ademinsteration Agency.
- **SOE:** State Owned Enterprise
- **SWF :** Sovereign Wealth Fund
- **SWFI :** Sovereign Wealth Fund Institute

CHAPTER I

INTRODUCTION

The state has a public purpose in the exercise of its sovereign power. Such power is inherent in statehood and justifies the existence of a government. The primary public purpose of the state is evident in the specific function of governments in discharging their traditional role of maintaining peace and order and protecting the country from external aggression. Modern states assume responsibility beyond their traditional functions and engage in economic activities. To accomplish this, one of the options is setting up an entity that undertakes commercial activities.¹ However, the reason why and the extent to which such a role is assumed varies depending on the political economy or ideology of a state. It is common to find enterprises owned by the state in different countries despite variation in their ideologies. Yet, this does not render ideology irrelevant as the utility they will have in a country is a function of the political, economic and philosophical underpinning of the legal system. Therefore, the question concerns the allowable limit of direct government activity in the market.²

Countries across the globe benefited from SWFs. They have become increasingly popular and have raised important questions. However, SWFs are not a new invention of the 21st century. In fact, from a historical perspective, the origin of SWFs dates back to the 19th century. Their existence increased after the financial crisis.³ Based on executive organ Proclamation No. 1263/2021 (EOP) and regulation No. 487/2022 (EIHER), Ethiopia founded its first sovereign wealth fund (SWF) on January 31, 2022, known as Ethiopian Investment Holdings (EIH). EIH is incorporated as a holding , wholly owned company by GOE, created for macroeconomic purposes and investment activity.

This study is consist of five chapters. The first chapter lays out the technical framework of the studies, including an introduction, methodology, and literature review; the second chapter

¹ Law and Public Enterprises in Asia (1976), International Legal Center, (Praeger Publishers)

² Owen E. Hughes (1998), Public Management and Administration, (Palgrave Macmillan), 1.

³ Michail Dekastros, Soverign Wealth Funds in international economic law (PhD in Law thesis, European University Institute Florence, 24 June 2016) 1

conceptualizes SWFs, legal issues related to SWFs and discusses experiences drawn from four countries' SWFs. The third fourth chapter them about legal framework EIH contains in-depth and analytical discussions of the EIH legal framework. The fourth chapter about concept and characteristics of EIH in context of domestic laws. The fifth chapter cover conclusion will summarize the main findings and suggest potential legal improvements. The chapters prepare to answer sub-research questions by answering the main research question.

1.2. Background of the Study

Ethiopia, located in the Horn of Africa, is a country with a population of about 121 million people,⁴ making it the second-most populous nation after Nigeria. It is also the fastest-growing economy in the East African region, registering double-digit economic growth in the previous decade. This growth has been fueled by significant investments in infrastructure development, including transportation, energy, and telecommunication.⁵

Ethiopia has set some ambitious goals in its GTP I and II plans, to achieve middle-income status by 2025.⁶ However, the country has not been entirely successful in achieving structural transformation and stimulating exports. This is due to the failure to incite the private sector and the reliance on loans and direct domestic sources to finance these plans, which created a macroeconomic imbalance.⁷ The economy faces a fiscal deficit situation. There is a need for a financial commitment to address this issue. One way the government could fund its development plans is by imposing taxes. However, data suggests that developing nations are not primarily relying on taxes to fund their development. Ethiopia's tax revenue-to-GDP ratio was 9.2% in 2019, lower than the standards of East African countries (19%) and Sub-Saharan African countries (16%). Due to this, deficits and concerns about debt sustainability and inflation control

⁴ World Population review, the latest United Nations estimation of Ethiopia population, 2021,

⁵ Planning and Development Commission(PDC) , Federal Democratic Republic of Ethiopia A Home Grown Reform Agenda , March,2020 2

⁶The world bank 2021 report, <<https://www.worldbank.org/en/country/ethiopia/overview>>(accessed on Dec 10, 2022)

⁷ PDC,HGRA 2020 (n5) 10

have arisen. Weak taxation's contribution to economic progress makes tax revenue, loans, and foreign aid less sustainable and viable alternatives.⁸

Despite the current balance of payments problem, FDI attraction has been a strategic alternative to solve the financial problem after regime change, particularly since the 2003 adoption of the Industrial Development Strategies of Ethiopia (IDS). Over the past 25 years, Ethiopia has received several FDIs.⁹ In recent years, after the reform, FDI remains a vital source of foreign capital.¹⁰ Additionally, the government's recent decision to introduce a range of fiscal and non-fiscal incentives and liberalize state-owned businesses has encouraged multinational corporations to invest in Ethiopia.¹¹ However, since 2016/17, net FDI inflows have been steadily declining due to political turmoil and the associated economic challenges during that period.¹² Furthermore, conventional investment incentives may not be sufficient to attract significant FDI, and investors require reliable partners who understand the unique circumstances of the country.¹³

Public assets that are well managed on average, add three percent of GDP as additional revenue to the government budget.¹⁴ Countries around the globe establish their SWFs to manage their public assets and pass on wealth to the future generation.¹⁵ These institutions serve as catalyst for

⁸Tariku Adugna The Application of Ethiopian Transfer Pricing Rules on Multinational Enterprise: Consistency of the Practice with the Ethiopian Transfer Pricing Rules. (LLM Thesis Addis Ababa university June, 2019) 29 : Planning and Development Commission (PDC), Federal Democratic Republic of Ethiopia (2021). Ten Years Development Plan: A Pathway to Prosperity (2021-2030). Addis Ababa 10

⁹ Policy Studies Institute; National Graduate Institute for Policy Studies, Ethiopia FDI Policy Report 2022, (PSI) 96

¹⁰ PSI 96: PDC, TYDP 2021 (n8)81

¹¹ Tariku Adugna (n8)

¹² PSI ,2022 (n10) 96

¹³ Ethiopian Investment on-board its subsidiaries Ethiopian Investment Holdings press release June 23 Addis Ababa

¹⁴ Victor Gasper :Jason Harris: Alexander ,F , Tieman , The wealth of Nations: Governments can Better Manage What They own and owed. (*IMF Blog October 18,2018*)

< <https://www.imf.org/en/Blogs/Articles/2018/10/10/blog-FM-the-wealth-of-nations-govts-can-better-manage-what-they-own-owe>> accessed November 7,2022

¹⁵ ibid

prosperity as they can unlock the value of public assets.¹⁶ Since the modern government was formed in Ethiopia, State-Owned Enterprises (SOEs) have been established in various forms in the name of to provide essential utility for public.¹⁷ The aim and organizational structures those SOEs varied with the ideological changes of the governments.¹⁸ There were 320 SOEs in the country before the 1991 regime change, of which 280 were transferred to private investors. Currently, Ethiopia has thirty-six SOEs with varying levels of performance.¹⁹ According to Mamo Mihrtu, the founding CEO of Ethiopian Investment Holding (EIH), some SOEs continue to report losses while others entirely shift to pure businesses, dropping the public goods element.²⁰ The Ethiopian government believes it is essential to maintain the public goods element as well as productivity.²¹

The Ethiopian government (GOE) recognizing that countries's assets are far greater than its liabilities, initiate public asset reform to foster a robust economy growth.²² The establishment of EIH will be necessary to create an institutional arrangement²³The system is supposed to improve the management of government resources and provide more financial supply.²⁴ However, the legal framework of EIH raises fundamental legitimacy issues and sparked academic and practical debate among academia and policy circles because of its effect on the economy.

¹⁶ *ibid*

¹⁷ Tewodros Meheret : An Overview of the Concept and Characteristics of Public Enterprises in Ethiopia, MLR Vol. 8, No.2 December 2014. 334

¹⁸ *ibid*

¹⁹ Haileysus Seyom ,Fana Television , conduct Interview interview with Habtamu Hailemikale, Chief Director of PEHAAgovernment profit dividend payment from SOEs <<https://by.youtube.com/watch?v=C7jv2r5Pa7A>>[accessed on 5/4/2023] Interview Habtamu Hailemikale, Chief Director of PEHAA

²⁰ Ashenafi Endale, CBE Ethio- Telecom,EAL question boundary between EIH and SOEs *the reporter* (Addis Ababa, January 25,2022

²¹ *ibid*

²² PDC, HGRA 2020 (n5) 10: EIH press release (n16)

²³ EIHER preamble

²⁴ *ibid* : EIH press release (n13)

1.3. Statement of the Problem

EIH is a distinct legal entity with its capital source, derived from previous successful SOEs.²⁵ Despite being a SWF-type business entity, which is typically established to utilize national surplus resources, like oil, precious minerals, or excess foreign currency reserves. Ethiopia currently does not have such resources. Nevertheless, EIH manages a significant amount of national wealth and has specific autonomy from financial and other regulatory legislations.²⁶ such as being free from NBE authorization for transactions made in foreign currency and having complete authority to decide in mergers, purchasing and selling things, hiring staff outside of public service law, and the like. Along with that, EIH has unprecedented autonomy in governance. In addition, the EIH board chairperson is the prime minister; the institution is accountable to the Office of the Prime Minister. Besides, the BOD member selection process is unknown. Generally speaking, this creates legitimate concerns over the transparency, accountability, and political influence of EIH.²⁷ Furthermore, the objectives of EIH appear not to be clearly defined. There seem to be overlaps between the aims of government institutions. According to Article 5(3) of EIH Regulation No. 487/2022, attracting FDI is the main objective of EIH. However, the Ethiopia Investment Commission (EIC), under Investment Proclamation No. 1180/2020 (IP) Art. 37, has the same mandate. Further, concerns and questions began to be raised about the EIH organization at the first introductory meeting,²⁸ Among the questions raised in that summit, which are worthy of research, the concern is using EIH's fund as a tool for strategy and commercial purposes. And the selective transfer of profitable and effective SOEs under EIH ownership. Since the purpose of holding organizations is the efficient utilization of the asset, Those institutions are already effective. the purpose of the EIH management decision

²⁵EIHER Art 7 and 8:EIH press release (n13)

²⁶ Also, IFSWF, what is the sovereign fund? www.swfinstitute.org/research/sovereign-wealth-fund : Dönmez, G., and Ereğ, M. S. (2018) An Evaluation Regarding the Turkish Wealth Fund: Aims, Activities, and Legal Status BEÜ AİD, 3(4), 68

²⁷ See Behrendt, S. (2010), "Sovereign wealth funds and the Santiago principles: where do they stand? ", Carnegie Paper No. 22, Carnegie Endowment for International Peace, Washington, DC: International Working Group for International Wealth Funds (IWG), (2008), Sovereign Wealth Funds: Generally Accepted Principles and Practices. 11 (IWG,2008)

²⁸ Ashenafi Endale(n24)

seems controversial. In addition, Does the EIH board replace the board of SOEs or employ other methods to exercise its ownership function? Those issues and questions indicate a knowledge gap about EIH worth studying further. Generally, the thesis strives to answer research questions that will contribute to filling knowledge gaps about the legal framework of EIH.

1.4. Research Question

The research strives to answer the following questions;

1.4.1. Main Research Questions

- Does the EIH legal framework promote sound institutional and governance arrangements for effective operational management?
- Does the EIH legal framework appropriately address legitimate concerns on accountability, transparency, and undue political interference ?

1.4.2. Specific Research Questions

- Is there a legitimate reason for establishing the EIH when there are no surplus national resources?
- Are the objectives of EIH clearly defined and publicized to address concerns about political interference?
- How EIH's fund utilize as a tool for two purposes, which is different nature, strategy and commercial?
- Does the legal framework ensure the legal soundness of the EIH and its transactions?
- If the EIH's purpose is to maximize public assets, why did its management take over already profitable SOEs?
- Does the EIH regulation effectively address issues of transparency, accountability, and undue political influence on the fund's operations?
- Do the legal exceptions and regulatory exemptions granted to the EIH solely serve financial and economic objectives?
- Does the governance structure of the EIH ensure appropriate and effective

professional leadership?

- Does the EIH's mandate to attract FDI overlap with that of the Ethiopia Investment Commission?
- Is EIH can be considered a public enterprise in the existing law of Ethiopia?

1.5. Objectives of the Study

An achievable action that will be expected from the study;

1.5.1. General Objective

- The objective of this research is to identify and evaluate evaluate the legal framework of EIH regarding facilitating EIH's effective operational management and ensuring accountability, transparency, and undue political interference.

1.5.2. Specific Objectives

- To describe the concept and characteristics of EIH in an international aspect.
- To articulate the EIH legal framework in a single theme.
- To examine concepts and characteristics of public enterprise in correlation to EIH in the existing law of Ethiopia.

1.6. Significance of the Study

The introduction of SWF is new to Ethiopia. This study could be the first original work. As a result, it has a considerable role in extending the knowledge base about SWF to EIHs, portfolios, and other concerned bodies. The study is also to have its own academic and legal significance; it would help new researchers and academicians to further studies on the subject matter as it is an unexplored area of law. Besides that, the outcome of this study will be of much use to the legislative and policymakers as it will enable them to see the importance of revisiting and proposing possible amendments to the regulation.

1.7. Scope of the Study

The study was limited to articulating EIH regulation's most common regulatory concerns. The purpose of this thesis lies in the fact that it does not attempt to address the phenomenon of SWFs as a unique type of market entity that necessitates a different regulatory framework but rather a specificity to the Ethiopian context. Therefore, the thesis focused on identifying the EIH legal and institutional framework and evaluating its clarity and soundness with other laws.

1.8. Limitation of the Study

The research encounters limitations such as a lack of resources, and the absence of specific legal studies on the legal framework of SWFs, specifically on EIH.

2. LITERATURE REVIEW

The researchers conduct a theoretical and empirical review. The executives' establishment proclamation and EIH regulations didn't define the business of Type EIH. However, there is literature that defines EIH as a SWF-type business entity.²⁹ For legal research, the legal definition is essential.

There is a contested definition of SWFs: 'SWF is a government alternative investment vehicle managed by the central government instead of being kept for reserve' (Razanov A., 2005); the definition of Razanov is broad and includes all other things like pension funds and traditional state-owned investments '(Blundell-Wignall, Hu, and Yermo, 2008, 3); IMF also provides a categorized base definition 'SWFs are funds operated by governments for various objectives and are created by allocating funds intended for long-term investments' (IMF, 2008); SWFs are government investment vehicles used for macro-economic objectives, owned and managed by the central government (IWG, 2008); The IWG definition is the generally accepted among countries that signed the GAPP. Literature provides different views on the categorization and taxonomy of SWFs: there are five types of SWFs based on objectives (IMF 2013); the classification is into three kinds (PWC 2016). The review is essential to map the investment pattern of EIH.

Regarding the legal basis, the legal basis on which SWFs differ from general governmental authorities and funds (IFSWF (n28)), the legal framework for SWFs is to balance sustainable development and legitimacy (Kyunghoon Kim, 2023). A well-designed SWF legal framework aims to promote the operation of management and address legitimate concerns. (IMF WP/13/231, 2013)

Regarding EIH, there is no legal research available about EIH, particularly on the legal and institutional aspects of EIH, except for some articles on general multi-disciplinary aspects and a legal brief. However, in *The Concept and Characteristics of Public Enterprises in Ethiopia: An Overview* Mizan Law Review, Vol. 8, No. 2, December 2014 by Tewodros Meheret utilized the vital literature to characterize EIH.

²⁹ Global SWF's: fund of the month, conduct an online interview with Mamo Mihrtu , CEO

EIH becomes an associate member of the International Forum of Sovereign Wealth Funds (IFSWF) in January 2022 and pledges to implement GAPP. IFSWF membership is approved for institutions in the early stages of becoming SWFs.³⁰ It is a vital instrument to identify the legal framework of EIH.

Members of the International Working Group of SWFs (IWG) have signed the Santiago Principles, also known as GAPP. It is a voluntary code of conduct response to legitimate concerns over transparency, accountability, and political influence (Behrendt, S. (2010)). GAPP covers key areas such as: (1) The legal framework and objectives of SWFs (2) The institutional framework and structure. Following the Kuwait Declaration in 2009, IFSWF became a permanent but voluntary organization with a mandate to help its 40 members implement the principles. (IFSWF, 2016) Even though the Santiago Principles enforce voluntary adherence, there is a lack of formal procedures for ensuring compliance and the subordination of the principles to domestic law. However, the practical importance of this dynamic process allowed for the progressive improvement of SWF governance enhanced accountability, and ensured more inclusive coverage for diverse institutions from different jurisdictions (Behrendt, S. (2010)). Hence, the study will explore the alignment of the legal framework of EIH with GAPP. The study, to offset the deficiencies of GAPP, made a review in search of lessons for EIH.

The selective takeover of efficient SOE under the asset management of EIH raised questions. The researcher reviews selected SWFs state practices, legislation, and literature based on relevancy, which are considered experience models for EIH.³¹ They are similar to EIH, specifically in their objective and way of financing. In addition, the review is essential to get lessons to EIH and to show EIH regulations boldly.

The goals intended through EIH need to be in this research. EIH has a threefold policy purpose: serving as the strategic arm of the GOE, attracting FDI, and consolidating assets (EIH-R). For

³⁰ IFSWF, IFSWF Strengthens its Footprint in Africa with Three New Memberships <<https://www.ifswf.org/general-news/ifswf-strengthens-its-footprint-Africa-three-new-memberships> > [accessed on November 12, 2022]

³¹ Global SWF's (n29)

this reason, documents related to economic policy, such as the Homegrown Economic Reform Agenda (PDC, 2020), Industrial Development Strategies (IM, 2003), and Ten Year Development Plan (PDC, 2021), will be reviewed. Ethiopia has no comprehensive FDI policy. It is derived from industrial strategy and is also found in investment laws (PSI, 2022). Therefore, the review include investement laws.

Many claim the mandate of EIH on attracting FDI overlaps with the authority of EIC. The two institutions have the objective of attracting FDI. That seems to be in conflict. The researcher will conduct a theoretical and empirical review of how the institutional framework functions to fill the above knowledge gaps.

3. RESEARCH METHODOLOGY

Research method is a mixed method research design that deals with doctrinal and empirical research. The study relies mainly on qualitative data because qualitative methods are more flexible and do not require representative sampling. It is vital to get valuable and exhaustive information. However, quantitative methods will used in the same part of the research. The doctrinal study uses legislation as primary data and secondary data like literature about the law. The empirical part of the research relies on raw data collected by self-conducted interviews with the EIH legal counselor and secondary data collected from various sources, including EIH official interviews given on different occasions and a review of related literature and business newspapers. This research type is descriptive and analytical legal research. The former is selected because it is suitable to describe the subject matter under consideration. The latter was employed to make a critical evaluation based on primary and secondary data.

3.1. Data Sources

The primary data was collected from various legislations, and the secondary data was from published and unpublished sources by electronic means and by conducting desk reviews in the custody of the EIH, the EIC, and the PEHAA.

3.2. Data Gathering Instruments and Tools

The data-gathering tools employed in this study will be the analysis of documents and interviews:

3.3. Sampling

Forty SWFs have already become full and associate members of the ISWFF.³² The study selects SWFs to learn more about SWFs. The sampling technique is purposive sampling literature written by a leading scholar in the field and selecting four foreign SWFs experience based on relevancy, experience, and success.

4. DATA ANALYSIS AND INTERPRETATION

The data and information obtained from various sources will be interpreted and analyzed. The data will assess through descriptive analysis, and the legal documents will be analyzed using the rule of legal interpretation. Researchers will also rely on comparative analysis to provide answers to research questions.

5. ETHICAL CONSIDERATIONS

The study was conducted in a manner that keeps ethical considerations, such as voluntary participation, consent, confidentiality, and anonymity, no harm, and all ideas and expressions will be acknowledged.

³² IFSWF available on Website <http://www.ifswf.org> Access on December 25,2022

CHAPTER II

2. THE CONCEPT AND CHARACTERISTICS OF ETHIOPIAN INVESTMENT HOLDINGS IN INTERNATIONAL CONTEXT

2.2 Definition of SWFs

The literature discussing SWFs has provided a wide range of definitions.³³ Furthermore, State and continental, sub-continental institutions delivered myriad definitions.³⁴ Since the practices of SWFs and their respective countries are crucial when defining the implications of SWFs on other markets, It is necessary to explain what exactly constitutes a SWF. The generally accepted definition provided by IWG will be the regarded definition for this paper.

According to the IWG, SWFs are defined as special-purpose investment funds or arrangements owned by the general government to fulfill their financial goals. SWFs—established by the general government for macroeconomic purposes—hold, manage, or administer financial assets and use various investment strategies, including investing in foreign financial assets. SWFs are commonly established-through the balance of payments surpluses, government foreign exchange operations, privatization revenues, budgetary surpluses, revenue from the export of commodities, proceeds from business and assets, and transfers of state assets and resources. SWFs are less risk-averse than other institutions maintaining conventional foreign exchange reserves due to their ability to operate over a long-term investment horizon. Foreign currency reserve assets held by monetary authorities only for the traditional balance of payments or monetary policy purpose, operations of SOEs in the conventional sense, government-employee pension funds, or assets managed for the benefit of individuals are excluded, from the concept of an SWF.

While SWF is an all-encompassing term, it covers a group of heterogeneous funds that have existed for years. What these funds have in common is public ownership and are usually established to meet a macroeconomic purpose, even though these purposes may vary at times and be multiple.

³³ Michail Dekastros, *Sovereign Wealth Funds in international economic law* (PhD in Law thesis, European University Institute Florence, 24 June 2016) 1

³⁴ *ibid*

According to their institutional objectives, SWFs can be divided-in five categories: stabilization funds, which protect state budgets from the excessive volatility of commodity prices; saving funds, which ensure intergenerational wealth transfers; development funds, which make investments and allocate resources to increase the domestic development (productivity) of the country in long-term usually, these funds invest in infrastructure projects; sovereign pension reserve funds, which pay for potential future pension deficits, and reserve investment corporations, which manage currency reserves above those by the central bank to maximize the risk-return ratio.³⁵

EIH becomes an associate member of the International Forum of Sovereign Wealth Funds (IFSWF) in January 2022 and pledges to implement GAPP. IFSWF membership is approved for institutions in the early stages of becoming SWFs.³⁶ It is a vital instrument to Characterize framework of EIH in interntional context. The EOE proclamation and the EIH regulation, do not define EIH business type. However, based on inferences drawn from the purpose, the legal structure, and the governance structure, EIH can be described as a SWF type of business entity. According to law, EIH is owned and managed by the central government, has public objectives to serve as a strategic arm of government, and engages in investment activity.³⁷ Based on primary institutional objectives, EIH can be categorized in the framework of economic development fund, which have long-term aims and typically aim at generating higher returns over a long time horizon.³⁸EIH is less directly linked to fiscal or balance of payment surpluses earned from resource revenues.³⁹

2.3 The Legal Framework of SWFs

The legal framework of SWFs is required to promote sound institutional and governance arrangements for the effective management of SWFs. The SWF legal framework, among other things ;(i) provide for the legal form and structure of the SWF and its relationship with other

³⁵ Abdullah Al-Hassan, Michael Papaioannou, Martin Skancke, and Cheng Chih Sovereign Wealth Funds: Aspects of Governance Structures and Investment Management, IMF working paper, November 2013, 5

³⁶ IFSWF (n30)

³⁷ EOE Art 54: EIHER Art 5

³⁸ ISWF Santiago principles< <https://www.ifswf.org/members/ethiopian-investment-holdings>>

³⁹ ibid

state bodies (such as the Ministry of Finance and central bank); (ii) be in line with the general legal framework governing the government's budgetary processes; (iii) ensure the legal soundness of the SWF and its transactions; (iv) support its efficient operation and the accomplishment of its stated policy objective(s), which should be economic and financial; and (v) promote effective governance, accountability, and transparency.⁴⁰

In practice, there are a wide variety of legal frameworks for SWFs. Countries across the world have chosen different legal forms for these funds. Generally, three legal structures describe the relationship and governance structure between the SWF and the government. These legal structures are obtained acceptance as meeting the requirements outlined in the GAPP. Provided that the overall legal framework is sound.

The separate legal identity SWF: Has a full-scale capacity to act under the law and is governed by a specific constitutive law. These SWFs have legal identities under public law, operate independently from the government, and have a board predominantly comprised of investment experts. Additionally, the board and executive body are reasonably independent of political interference, and the law provides responsibility and tenure. Notable examples of SWFs with this form of legal personality include the Kuwait Investment Authority, the Australian Future Fund, and the Korea Investment Corporation.

The pool of assets: This legal framework for SWFs does not consist of a separate legal identity. It is gathering assets into a fund utilized for investment purposes. The owner is the state (national or sub-national governments) or the central bank. In these cases, legislation usually sets out specific laws that govern the asset pool. Examples are the Botswana Pula Fund, the Canada Alberta Heritage Savings, and Norway's Government Pension Fund Global.

The state-owned corporation: This type of SWF takes the form of a state-owned corporation with a distinct legal personality controlled by the government. The general company law governs

⁴⁰ IWG,2008: IMF, 2013,(n31) 6

the fund. SWF-specific rules may also apply. Examples of such funds are Singapore's Temasek and China's China Investment Corporation.

The legal framework of EIH closely resembles that of state-owned corporations, as the government maintains ownership and control of the entity. While operating as a distinct legal entity, it is governed and operates under commercial law, the civil code, and other relevant laws, provided they do not conflict with the provisions of the establishment proclamation and regulations.⁴¹ ensuring compliance and transparency in all its dealings.

2.4. Comparative studies of four State Practices on fundamental features of SWFs

This section examines the lessons from four countries with commendable economic performances. Turkey Wealth Fund (TWF), Indonesia Investment Authority (INA), Malaysia (Khazanah), Singapore (Temasek). These companies were selected because they are similar to the EIH.⁴² All of them are non-commodity fund and strategic vehicles for government. It is also vital to note Temasek and Khazanah, former companies in the industry, still successful. TWF and INA are relatively new. The comparative studies focused on four parameters that are fundamental features of SWFs: (i) legal structure (ii) Source of the fund; (iii) mandate; and (iv) Governance and audit.

Legal base and form: The legal foundation for INA (LPI) is Job Creation Law No. 11/2020 (Omnibus Law) and three complementary regulations. These include Government Regulation No. 73 of 2020 on the Initial Capital of the LPI, Government Regulation No. 74 of 2020 on the LPI (GR 74/2020), and Presidential Decree No. 128/P of 2020, which established a Selection Committee for the Candidates for the LPI Supervisory Board from Professional Elements.

INA is a distinct legal entity from the government (being of a sui generis nature), with specialized authority over the management of central government investments.⁴³ Although the

⁴¹ EIHR Art 6, 10, Art 3 (2) (4)

⁴²Global SWF's (n29)

⁴³ Government of Indonesia, Government Regulation No. 74 of 2020 (GR) Art. 2

government is its sole owner, its duties and assets are separate from those of the government.⁴⁴ It is important to note that INA's actions are not considered state actions under public law.⁴⁵

Temasek and Khazana draw their legal basis from company laws, following the structure of state-owned corporations.⁴⁶ They are incorporated and operated under company laws.⁴⁷ Temasek's main shareholder is the finance minister of GOS. Khazana shares are all owned by the Minister of Finance. Except for one share belonging to the Federal Lands Commissioner,⁴⁸ Temasek, and Kanzah are neither statutory boards nor government agencies. Both have their own Board of Directors and a professional management team, like any other commercial company.⁴⁹ However, both disclose the fundamental features of corporate structure on their websites.⁵⁰ TWF, legal framework is based on Law No. 6741 on the Establishment of Türkiye Wealth Fund Management Company (as amended) and Presidential Decree No. 9424. It is a joint-stock company without legal personality and is affiliated with the Turkish president by law.⁵¹

ii). **Sources of fund:** Similarly, proceeds from business and assets, transfers of state assets and resources, and assets obtained from debts, bonds, and other channels serve as legal sources of the funds.⁵² However, it is important to note that the INA regulation has certain exceptions when it comes to the transfer of state assets that involve land management, natural resources, water, or other assets related to public welfare.⁵³ Despite this, the transfer of state assets and resources has

⁴⁴ Putri Rachelia Azzura Hilda Leswara Vincent Ariesta Lie, Indonesia's Newly Established Sovereign Wealth Fund: A New Chapter in Indonesia's Economy

⁴⁵ ibid

⁴⁶ See IWG,2008 12

⁴⁷ Khazanah Report Growing Malaysia's Long-term Wealth May,2018.1; Temasek Holdings FAQ sep,15 2011 pdf: Temasek Review, available at www.temasekholdings.com.sg>

⁴⁸ ibid

⁴⁹ Temasek Holdings FAQ sep,15 2011 pdf: also See Khazanah Report (n47)

⁵⁰ See IWG,2008 12

⁵¹ The Law No. 6741 on Establishment of Türkiye Wealth Fund Management Company and Amendments to Certain Laws Art. 2

⁵² Khazanah Report(n47) :The Law No. 6741(n63)Art.4(1/d) :Temasek Review (n47): Putri Rachelia (n44) 2

⁵³ GR(n43) Art 37 :Putri Rachelia (n42)

still been a principal source of funds for these funds, especially in cases where it involves efficient, monopoly, or flagship SOEs, as per government decisions.⁵⁴

(iii) **Mandate:** Similarly, all the funds, INA, Temasek, Khazanah, and TWF, aim to contribute to national economic development (investment strategy vehicle) with the task of making long-term investments and engaging in equity investment and asset management in foreign and domestic markets.⁵⁵ Specifically, INA's objective is to support sustainable national development.⁵⁶ Khazanah's objective and task are to make an overall contribution to the economic development of Malaysia. It was mandated to grow the country's long-term wealth.⁵⁷ TWF aims to increase growth and finance development projects. TWF and its sub-funds contribute to capital markets through the depth and diversity of instruments, bringing domestic public assets into the economy, procuring external sources, and participating in strategic, large-scale investments.⁵⁸ The Temasek establishment was to help state-led industrialization as the commercial wing of GOS. However, today, its mission is to create and maximize sustainable shareholder value as an active investor and shareholder of successful enterprises.⁵⁹ Still, its investment greatly influenced the state-led approach.⁶⁰ Distinctly, INA includes FDI attraction as one of its main objectives.⁶¹

Moreover, all the funds enjoy immunity to pursue a diversified mandate, and the INA can be studied to have legal protection in specific cases as a sui generis agency. Such as Law No. 5 of 1999 on the Prohibition against Monopolistic Practices and Business Competition, as amended by the Omnibus Law (the "Anti-Monopoly Law"), which exempts certain activities from compliance with its provisions, including, among others, legal acts or agreements that aim to

⁵⁴ The Law No. 6741(n64)Art.4(1/d) : Temasek Review (n47): Khazanah Report (n47) :Putri Rachelia (n44) 2

⁵⁵ The Law No. 6741(n64)Art.4(1/d) : Temasek Review (n47): Khazanah Report (n47) :Putri Rachelia (n48) 2

⁵⁶ Kyunghoon Kim How to Make Indonesia's Sovereign Wealth Fund Work, Lowy Institute Analysis, July 2022. 3 & 15

⁵⁷ Khazanah Report(n47)

⁵⁸ The Law No. 6741 (n51)Article 1

⁵⁹ Temasek Review(n47)

⁶⁰ Wilson Ng, The evolution of sovereign wealth funds: Singapore's Temasek Holdings(Leeds University Business School, University of Leeds, Leeds, UKJFRC 18,1 p,8< www.emeraldinsight.com/1358-1988.htm>

⁶¹ GR Explanatory Note

implement the prevailing laws and regulations. Since the INA is a sui generis agency given special authority to invest, manage, and develop assets under the Omnibus Law and the INA implementing regulations, there can be an argument that the actions of the INA may be exempt from the requirements under the Anti-Monopoly Law.⁶²

TWF has certain privileges and immunities under the law.⁶³ The manager is not required to adopt capital market legislation when issuing capital market instruments; if it is necessary to adopt capital market legislation, they can be exempt from paying fees to the capital markets boards. Asset leasing companies established by the manager can enjoy benefits like exemption from trade registry charges and exemption from registry and quotation fees. The manager and the SWF can procure foreign financing and grant guarantees without the approval of the Undersecretariat Treasury. They are exempt from various public laws, including the Law on Competition, Capital Markets Law, Court of Accounts, State Economic Enterprises, Privatization Practice, State Officers Law, Public Tender Law, and Public Tender Contracts Law. Additionally, the manager and the SWF are exempt from state-controlled institutions and partnerships, and both the fund and sub-fund are exempt from income tax, corporate tax, and other taxes.

Temasek and Khazanah have no sovereign immunity by law since their legal structure is a state-owned company under the fiancé minister. However, funds with this type of SWF get immunity from their owner.⁶⁴ But Temasek disclosed that it doesn't enjoy the benefit of tax exemptions and pays taxes wherever it operates.⁶⁵

(iv). Governance structure: The governance structure arrangement follows the corporate governance principle in all funds. INA has a unique two-tiered board structure consisting of a Board of Directors (BOD) and a Board of Supervisors (BOS). The BOS oversees(overseeing) the management functions of the BOD, while the BOD is responsible for day-to-day operations.⁶⁶

⁶² Putri Rachelia (n44)

⁶³ The Law No. 6741 (n51) Article 8: also see, Mete Yegin: Sait Eryılmaz, Turkey Joins The Rest of G20 By Establishing Its SWF(*Clifford change and Yegin Ciftci Attorney Partnership*

⁶⁴ Abdullah Al-Hassan (n35)

⁶⁵ Temasek Review (n47)

⁶⁶ GR (n58) Art 8

Temasek, TWF, and Khazanah K have a single BOD and CEO, the board mandate is to oversee the management function and the CEO for daily operations.⁶⁷

The highest executive personnel of the central government (usually a chairperson of the main governing body, BOS or BOD) is responsible for appointing and replacing the members of the governing bodies in TWF Temasek, Kahznah, and INA, which hold significant influence in fund management. It is crucial to ensure transparency and integrity for the benefit of all stakeholders. For instance, The President appoints and removes five members of the Board of Supervisors (BOS) of INA;⁶⁸ the President of Turkey appoints and replaces five members of the BOD;⁶⁹ and the President of Singapore and the Prime Minister of Malaysia appoint and remove board members. Kanzaah and TWF boards are headed by the prime minister and the President respectively.⁷⁰ INA Board of Supervisors is presided over by The Indonesian Finance Minister.⁷¹ Temasek's boards are chief by independent CEOs.⁷²

The INA has a structured selection procedure. For instance, the three BOS members are from the professional field, and they are subject to several conditions, such as not belonging to any political parties and being selected from the candidates put forth by the President-formed Selection Committee, which comprises five people, including the Minister of State-Owned Enterprises and the Minister of Finance. BOD has five members, all expected from Professional fields, and are appointed and dismissed by the BOS. BOD members must also fulfill several requirements, such as not belonging to any political parties, and can only be replaced based on specific grounds.⁷³

Although Temasek, Khazanah, and TWF have no legal selection procedure, specifically for Temasek and Kazenah, this emanates from their creation of legal structures, but these funds

⁶⁷ Khazanah Report(n47) : Temasek Review ((n47)

⁶⁸ GR Art 11 and 28

⁶⁹ Mete Yegin (n63) 2 The Law No. 6741(n55) Art 2 : Presidential Decree No.9424. Art 13

⁷⁰ Khazanah Report(n47) : Temasek Review ((n47)

⁷¹ GR Art 11 and 28

⁷² Temasek Review ((n47)

⁷³ *ibid*

disclosed that their governance body embodies professionals from the government and private sectors.⁷⁴ Distinctly TWF's five board members, along with the manager of the BOD, are expected to meet minimum competency requirements by law,⁷⁵ which are a degree in one of four professions, namely, economy, finance, law, or banking, and five years of work experience.⁷⁶

Audit and public disclosure:It is crucial to note that all funds (TWF Temasek, Khazanah , and INA) have in place audit and periodic reporting mechanisms.⁷⁷The reports include performance activity and financial reports. The audits were at the internal and external levels. The preparation of financial reports will be under the International Registration Standards of Accounting (IFRS) or comparable national standards.⁷⁸Additionally, TWF has a Central Audit Committee that audits the reports of an independent audit firm.⁷⁹In all funds, the audit report is submitted to the fund supreme bodies within specific periods.⁸⁰However, the disclosure mechanism is varied.TWF audit report was presented and discussed in the national grand assembly,⁸¹while Temasek and Kazenah publish their reports on their websites,⁸²and INA publishes in Gazzetta.⁸³ It is important to note that all funds are not to through statutory audits.

⁷⁴ Khazanah Report(n47) :2018.1: Temasek Review ((n47)

⁷⁵ The Law No. 6741(n51) Art 2 : Presidential Decree No.9424. Art 13

⁷⁶ Mete Yegin (n63) 2

⁷⁷ Khazanah Report(n51) :Temasek Review ((n47); The Law No. 6741(n60)Art.6:Putri Rachelia Azzura ,Hilda Leswara Vincent Ariesta Lie (n44)

⁷⁸ ibid

⁷⁹ Law No. 6741(n55)Art.6(2)

⁸⁰ Khazanah Report(n47) :Temasek Review ((n47): The Law No. 6741(n55)Art.6(2) :Putri Rachelia Azzura ,Hilda Leswara Vincent Ariesta Lie (n44) 70

⁸¹ The Law No. 6741(n51)Art.6(3)

⁸² Khazanah Report(n47) :Temasek Review ((n47)

⁸³ Putri Rachelia , (n44) 70

CHAPTER III

4.THE LEGAL FRAMEWORK OF ETHIOPIAN INVESTEMENT HOLDINGS

3.1. Legal basis and form

EIH's legal framework is set according to the state organization Ethiopia's constitution, which is approved by the parliament. The executive branch exercises functional ownership of EIH.⁸⁴ EIH is established by primary legislation, under Executive Organs Proclamation No. 1263/2021(EOP) Art. 54, as a federal government body having its legal personality with defined objectives and a detailed organization to be set by Council of Ministers (CMs) regulation. The CMs, Per Article 103 of EOP, stipulate the powers, duties, and organization of EIH by Regulation No. 487/2022 within the pre-determined aim of the legislator. EIH, as well as sub-funds and companies set up by EIH or it, participates in setting up thereof, shall be considered a private business organization regardless of the shareholding percentage of the government.⁸⁵ Although 100% owned by the GOE, EIH is a holding company. Its liability is limited to its total assets.⁸⁶ The Civil Code, Commercial Code, and other relevant laws apply to EIH and its subsidiaries unless otherwise provided by Article 54 of the EOP and EIH Regulation.⁸⁷ Holding is a suitable form of organization for SWF state-owned-type investments. Enable the optimization of the value of portfolios (SOEs) and participation in strategic investments.⁸⁸

3.2 Objectives and Activities

Objectives

The pursuit of objectives should be narrowly defined and mandated explicitly. A clearly defined policy purpose will also ensure that the operational management of the SWF will conduct itself

⁸⁴See IMF working paper (n35)12

⁸⁵EIHER Art 3 (3)

⁸⁶EIHER Art 15

^{87 87} ibid Art.3 (4)

⁸⁸ Commercial code Art 9 sub 2

professionally and ensure that the SWF undertakes investments without any intention or obligation to fulfill, directly or indirectly, any geopolitical agenda of the government.⁸⁹

EIH has three specific policy objectives that are clearly outlined and mandated.⁹⁰ The company's primary objective is to serve as a strategic investment arm of GOE,⁹¹ typically involves pursuing an industrial development strategy (IDS) in countries like Ethiopia. This strategy includes investing in infrastructure and social capital, such as public education and health, which require significant financial resources. Ethiopia has been pursuing an IDS since 2003,⁹² but financing economic programs through direct domestic sources and loans can create macroeconomic imbalances.⁹³ To address this issue, revenue from equity investments is seems considered a viable option to correct the balance of payments.⁹⁴ Hence, EIH investment activities will focus on priority areas such as agriculture, manufacturing industries, mining, ICT, and tourism, as well as enabling infrastructure and other productive or profitable sectors.⁹⁵

EIH's second objective is to contribute to sustainable economic development through the professional management of its funds and assets, achieving optimal use in accordance with international best practices and corporate governance principles and maximizing the value for the benefit of current and future generations. The regulation encourage best practices such as the International Federation of Accountants Code of Ethics; IFSWF membership is considered a commitment to increasing the use of best practices.⁹⁶

⁸⁹ IWG,2008

⁹⁰ EIHER Art 5

⁹¹ ibid Art 5 (1)

⁹² PSI ,2022 (n9) 94: also see Ministry of Information , Federal Democratic Republic of Ethiopia ,Industrial Development Strategies (IDS) july,2003:

⁹³ PDC,HGRA 2020(n5)10

⁹⁴ ibid

⁹⁵ EIHER Art.5 (1):MI, (IDS) july,2003(n96): Explanatory note over the draft of Federal executives organ proclamation September 2023 pdf collected from HPR

⁹⁶ PSI, (n9) 96

EIH also serve a vehicle for attracting foreign investment.⁹⁷ By, establishing a co - investment platform, consolidating assets for further monetization, unlocking values from current unutilized assets, and thereby bringing the highest possible return on investment.⁹⁸ FDI attraction outline in major policy instrument such as IDS and TYDP and HGER as alternative source of finance.⁹⁹ Foreign investors need competitive partner to participate in strategic investment the role of EIH seems serve as commercial wing of GOE.¹⁰⁰ Further in order to engage joint investment with domestic investor, the foreign investors need trustworthy and champion partner, EIH may serve to become an alternative since the country private sector has capital limitation.¹⁰¹ There is a practical debate about overlapping power between EIH and EIC. Some suggest that one priority of EIH is attracting FDI, which is redundant with the role of EIC.¹⁰² The base of the debate is that it seems the objectives of EIH are not clearly defined. Certainly, clarification of the mandate of an institution is essential to preventing resource wastage and implementing good governance. It also benefits to set responsibilities.¹⁰³ However, the same lawyer also argues otherwise. Even though both institutions share objectives for attracting FDI, each has a different role and is not redundant. EIH is an equity partner, whereas EIC is the regulator.¹⁰⁴ The second argument seems sound. The regulation lists illustrations under its objectives of attracting FDI related to equity partners, such as establishing a co-investment platform, consolidating assets for further monetization, and unlocking the value of unutilized assets. The illustrative element commonly shares about partnerships and thereby bringing the highest profit, and for this purpose, EIH is

⁹⁷ *ibid* Art 5(3)

⁹⁸ *ibid* Art 5(3)

⁹⁹ PSI, (9) 96

¹⁰⁰ *ibid*

For instance under the investment regulation five sectors reserved for joint investment with the government.

¹⁰¹ ML,IDS (n96)

IR lists seven sectors where foreign investment is permissible up to 49% ownership, most of which are related to transport services.¹⁰¹

¹⁰² Ashenafi Endale, CBE Ethio Telecom, EAL question boundary between EIH and SOEs (n20):

¹⁰³ EOEP Explanatory note(n99)

¹⁰⁴ Ashenafi Endale interviews *Mehrteab Leul, the principal lawyer at Mehrteab Leul and Associates (MLA) (The Ethiopian Reporter)* July 9, 2022, Addis Ababa

also particularly mandated to work in partnership/joint venture.¹⁰⁵ On the other hand, the EIC's objective is to create a suitable investment climate, and attracts and retain investment,¹⁰⁶ and it is specifically mandated to perform on aspects of efficient investment administration.¹⁰⁷ Nonetheless, as long as there is no prohibition on regulation, EIH may participate in promotion activities to change the perception of investing in Ethiopia on its path of searching for partnerships.¹⁰⁸

These purposes or objectives may be multiple, overlapping, or changing over time.¹⁰⁹ The policy purpose guides its investment policy and asset management strategy.¹¹⁰ EIH has a responsibility to ensure the alignment of its activities with national investment, debt servicing, budgetary, and other policy objectives.¹¹¹ EIH's board includes personnels from the Ministry of Finance, making it easy to perform this mandate.

Authorized Activities

EIH is authorized to operate and carry on the business of a holding company as per commercial code.¹¹² Hold shares, debentures, bonds, and securities, which are in its ownership and invest in any business and investment opportunities as it sees profitable.¹¹³ In addition to that, EIH has the authority to conduct a wide range of illustrative diversified activities in domestic and foreign markets including an investment in all kinds of capital and money markets.¹¹⁴ and manage state-owned assets assigned to it by the board¹¹⁵ Furthermore, transform property of SOEs and other assets transferred to it into optimal income-generating ventures, through structure and system

¹⁰⁵ EIHER Art 5 (3) , Art. 9 (c)(h)

¹⁰⁶ Investment Proclamation No. 1180/2020 Federal Negarit Gazeta, 26th Year No. 28 (IP) Art 37

¹⁰⁷ ibid Art 38

¹⁰⁸ See Global SWF (29)

¹⁰⁹ IWG, 2008

¹¹⁰ ibid.

¹¹¹ ibid Art 9 (1)(t)

¹¹² EIHER Art 9 (a)

¹¹³ EIHER Art 9 sub 1(b)(c)

¹¹⁴ ibid Art 9 (1)(d)

¹¹⁵ ibid Art 9 (1)(e)

change; ¹¹⁶Also establish or promote a new company or companies; ¹¹⁷and establish, control, manage and administer sub-funds; ¹¹⁸Acquire share in existing entities, funds solely or in association with local or foreign entities; ¹¹⁹Manage, supervise and exercise control of the subsidiaries under its pool; ¹²⁰decide on matters of incorporation of any of its subsidiaries in any part of the world; ¹²¹decide on the dissolution, amalgamation, division, sale, privatization, a spin-off of subsidiaries it calls into its pool. ¹²²

Ownership Function over Subsidiaries

EIH has the duty and responsibility regarding subsidiary companies under its ownership to serve and fulfill the powers and functions of a holding company as per the Commercial Code. ¹²³IEIH establishes a system to enable them to play an appropriate role in the economy, to develop modern corporate management, design proper guidelines that help them achieve their goals, and follow up the implementation of the same. ¹²⁴ Decide on their increase or reduction of capital, sale, amalgamation, division, spin-off, or any other restructuring, either by taking over one or more subsidiary companies or establishing a new company. ¹²⁵ Supervise that they have developed strategic and annual plans consistent with EIHS' strategy, approve plans, and monitor their implementation ; ¹²⁶ Devise dividend policy and cause to execute. ¹²⁷ Appoint/replace board members and decide on their remuneration and other benefits. ¹²⁸ Assist them to follow transparent procedures; develop a system under which they issue timely and proper financial and

¹¹⁶ ibid Art 9 (1)(f)

¹¹⁷ ibid Art 9 (1)(i)

¹¹⁸ ibid Art 9 (1)(g)

¹¹⁹ ibid Art 9 (1) (h)

¹²⁰ ibid Art 9 (1)(j)

¹²¹ ibid Art 9(1)(l)

¹²² ibid Art 9 (1)(m)

¹²³ EIHER Art 9 (2)(a)

¹²⁴ ibid Art 9 (2) (b)

¹²⁵ ibid Art 9 (2)(c)

¹²⁶ ibid Art 9 (2)(d)

¹²⁷ ibid Art 9 (2) (e)

¹²⁸ ibid Art 9 (2) (f)

performance reports; follow up the implementation of same;¹²⁹ perform any other task to achieve its objectives.¹³⁰

3.3 Capital and Source of the Fund

EIH has an authorized capital of 100 billion ETB, with 25 billion ETB paid up in capital.¹³¹ The board has the mandate to increase, reduce, or alter the capital in any form.¹³² EIH has an estimated 150 billion USD in assets under management (AUM), which makes up 34 percent of the country's gross domestic product (GDP).¹³³

EIH's legal source of funds is comprised of a pool of state-owned assets it manages, the investment returns and revenue of its assets, proceeds from the sale of its assets or enterprises, loans, and other facilities, including proceeds from the issuance of bonds and other financial instruments; furthermore, it can access any resources allocated to it and approved by the Board of Directors.¹³⁴ The EIH management decision which enterprise to pursue during its initial stage of operation to ensure full wealth utilization.¹³⁵ In the first introductory meeting, EIH disclosed 26 SOEs EIH disclosed 26 SOEs transferred to EIH, Previously the Public Enterprise Holding and Administration Agency (PEHAA) held oversight jurisdiction over those firms.¹³⁶ EIH Asset under management estimated at 2.4 Trillion ETB .¹³⁷ Based on the source of finance EIH can be categorized as an SOE type of sovereign investment vehicle.¹³⁸

¹²⁹ ibid Art 9 (2) (g)

¹³⁰ ibid Art 9 (2) (h)

¹³¹ ibid Art.6(1)

¹³² ibid Art.6(2)

¹³³ IFSWF(n30)

¹³⁴ EIHER Art.7

¹³⁵ Editorial 'Ethiopia's sovereign fund got its top executive' *Addis Fortune* (Addis Ababa September 23, 2022 Note, Blen Mamo (Deputy CEO of EIH), mentioned as source

¹³⁶ EIH press release (n13): EIH's portfolio [https://eih.et/ EIH-Portfolio](https://eih.et/EIH-Portfolio) accessed on October 2, 2022

Note : The Public Enterprise Holding and Administration Agency (PEHAA) held oversight jurisdiction over nearly 36 state firms

¹³⁷ EIH's Post LinkedIn account, accessed on February 15, 2023

¹³⁸ See IFSWF(n27)

EIH takes over the top-performing SOEs, including Ethiopian Airlines, Ethio Telecom, and Commercial Bank of Ethiopia.¹³⁹ Due to that fact, questions have been raised in the academic and policy circles on the rationale and justification of the management decision to gather such companies under its holding which are already effective. Although gathering previous SOEs under one umbrella one purpose to increase efficiency,¹⁴⁰ the EIH regulation has multiple purpose¹⁴¹ The establishment of EIH is the mode for those purposes, and it is an (innovative) institutional mechanism to utilize SOEs as alternative government investment vehicles to get more wealth for current and future generations. EIH is an economic development fund, also known as a strategic fund, it hold the most effective and efficient companies in its pool. The rationale is related to its objectives of raising revenue for the development program and attracting FDI.¹⁴² In other words, prioritizing investments is one purpose of the regulation. Therefore, These 26 SOEs seems identified in their capacity to raise revenue, making them preferable to foreign investors who look to work with the government in joint ventures/partnerships, Moreover; these SOEs play a significant role in achieving other strategic objectives. Further, Some SOEs does not mandate to borrow from forign source,the legal structure and mandate of EIH bring additional advantages to EIH and its subsidiaries.EIH is entitled to borrow from foreign sources for itself or the benefit of its subsidiaries.¹⁴³ Despite these benefits, some argue that maintaining the status quo may be the best course of action.

GAPP stipulated that the SWF's legal framework grants the legal soundness of the company and its transactions.¹⁴⁴ the company ownership and beneficial interests must be distinctly set and publicly disclosed. The assets should have legally established beneficiaries and legal owners. This clarity contributes to accountability. EIH ownership and beneficiary are well-established by law, and EIH is wholly- owned by GOE.¹⁴⁵

¹³⁹ EIH's portfolio(n159)

¹⁴⁰ See EIHER preamble ,Para 6

¹⁴¹ *ibid*, Para 3

¹⁴² See EIHER Art 5

¹⁴³ EIHER Art 9(1) (o)&(q)

¹⁴⁴ IWG,2008 (n27) 12

¹⁴⁵ *ibid*

BOD is responsible for setting the dividend policy of EIH and its subsidiaries, balancing the sustainable distribution of profits as dividends to the government, including resources needed for national investment, debt servicing, budget, and other policy objectives, with that of the retention of profits for EIH investment to generate future returns.¹⁴⁶ Instead, EIH disclosed a spending strategy (a mechanism) of withdrawal from the fund and spending on behalf of the government.¹⁴⁷ The corporation called Liability and Asset Management Corporation (LAMC) will be one beneficiary to pay public debt. LAMC has a legal mandate of absorbing public debt.¹⁴⁸

3.4 Mandate and Regulatory Exemptions

EIH has autonomy from the government and other agencies, manifested in different aspects. The regulation exempts EIH from regulation on foreign currency transactions and grants EIH discretionary authority to carry out transactions in foreign currency;¹⁴⁹ this includes borrowing, raising money from local and foreign sources, issuing debt instruments, securing or discharging any debt or obligations, entering into any guarantee, indemnity, or suretyship, and charging some or all of the subsidiaries for their debts.¹⁵⁰ EIH is also mandated to authorize the borrowing of funds or any other forms of indebtedness or guarantorship by its subsidiaries involving domestic and foreign financiers or business partners.¹⁵¹ Moreover, EIH can cooperate and engage with domestic and foreign counterpart funds and financial institutions.¹⁵² Additionally, EIH is authorized to undertake all preparatory work and decide on merger companies under its pool.¹⁵³

¹⁴⁶ EIH Art 12 (14)

¹⁴⁷ Haileysus Seyom(n19)

¹⁴⁸ Liability and Asset Management Corporation ,council of minister regulation No.483/2021 Federal Negarit Gazeta ,27th Year No.13

¹⁴⁹ The National Bank of Ethiopia Establishment (as Amended) Proclamation NO.591/2008 Federal Negarit Gazeta ,14th Year No.50 The National Bank of Ethiopia (NBE) has the power to regulate foreign currency transactions. Article 17(4), Art 13(a)(b), and Art 18(6).

¹⁵⁰ EIH Art 9(1)(o)(p)

¹⁵¹ EIH Art 9(1)(q)

¹⁵² EIH Art 9(1)(r)

¹⁵³ EIH Art 9(1)(m) & Art 9(2)(c)

This mandate is an exemption from competition law, which governs private business organizations.¹⁵⁴

Moreover EIH has some exemption from the scope of public legislation such as, EIH for entities within its purview holds the power to independently determine privatization and prepare accordingly,¹⁵⁵ Distinct from Public Enterprises Privatization Proclamation No. 1206/2020.¹⁵⁶ and maximizes outcomes for the entities under EIH's umbrella. This expanded authority streamlines the privatization. EIH has mandate to make a sale and buy fixed or movable property¹⁵⁷ in addition to that, it can get international consultancy services from its advisory board.¹⁵⁸ Distinct from other governmental administrative institution.¹⁵⁹

Further, EIH is mandated to work with foreign or domestic partners. For instance, EIH can participate in capital market investment with any arrangement, such as a partnership with the private sector,¹⁶⁰ and acquire shares in existing entities or funds solely or in association with local or foreign entities.¹⁶¹ Moreover, the Public Service Proclamation and Regulation govern the

¹⁵⁴ Trade Competition and Consumers' Protection Proclamation No 813/2013, Federal Negarit Gazeta, Year 20, No. 28, Art.9(2) mergers between two companies to have legal effect require decision of Ministry of Trade and Regional Integration .(Pursuant to executives organ proclamation (n4)Art105 (1/4);the provision in which to the establishment of "competition authority "inapplicable and as per Art 22(1/o) amended "Ministry of Trade and Regional Integration") pursuant Art 10 -12 The minister has the final say on whether to approve, deny, or approve with conditions.

¹⁵⁵ EIHR Art 9(1)(m)

¹⁵⁶ Public Enterprises Privatization Proclamation No. 1206/2020 Fed Negarit Gazeta 26th Year No.60 (PEPP) set terms, conditions of and modality for privatization SOEs and different stakeholder responsibility on privatization. Art 4(1) Art 4(4-2). Art 4(4).

¹⁵⁷ EIHER Art 9(1)(s)

¹⁵⁸ ibid Art 10(4)

¹⁵⁹ See The Ethiopian Federal Government Procurement and Property Administration Proclamation, No. 649/2009 Federal Negarit Gazeta, 5th Year No. 60: Art 12 Art 33 :The Federal Government Public Procurement Directive Ministry of Finance and Economic Development June 2010 Art 16(5)

¹⁶⁰ EIHER Art 9(1-d)

¹⁶¹ EIHER Art 9(1-h)

terms of employment, rating grading, and salary scale of federal entities.¹⁶² Unlike that, EIH has can hire staff and determine payment according to international good practices and commercial principles.¹⁶³

Usually, a dividend is a taxable income, but there is an exception with EIH. Income from dividends earned by EIH is exempt from tax, duties, and the like. It's important to note that this exemption doesn't extend to sub-funds and companies where the EIH is a shareholder.¹⁶⁴ However, EIH and its sub-funds are eligible for all other exemptions, including tax breaks.¹⁶⁵ In this regard, the regulation is only exempting dividend income from AUM. Hence, EIH pays a tax whenever it engages in business activity.¹⁶⁶ It's essential to keep in mind that one potential challenge with tax exemption is that it can hurt efforts to promote human rights and provide for public welfare.

Although exceptions and exemptions may appear to contradict the hierarchy of laws, they serve a crucial purpose. By delegating authority to governing bodies, they enable the effective achievement of public objectives. The EIH regulation is the prevailing law, notwithstanding Article 54 of the EOP No. 1263/202; this is crucial to ensuring the regulation can achieve its objective and benefit the public. On top of that, based on comparative studies, financial and economic aims are prioritized in line with fundamental principles of law. By adhering to these principles, businesses can ensure that they operate within legal boundaries and contribute to society's progress.

¹⁶² Federal Civil Servants Proclamation No.1064/2017 Federal Negarit Gazeta,24thYear No.12:
Federal Civil Servants Position Rating, Grade and Scale Salary Council of Ministers Regulation

¹⁶³ EIHER Art 9(1-K)

¹⁶⁴ *ibid* Art 16(2)

¹⁶⁵ *ibid* Art 16(2)

¹⁶⁶ See EIH post on EIH Linked in account on January 2023

3.5. Governance Structure

The governance structures of EIH reflect corporate governance principles and outline the roles of the owner, governing body, and operational management. It ensures that oversight, decision-making, and activity-based management are appropriately divided and effective. The owner represented by the GOE may exercise ownership supervision responsibility through the HPR standing committee,¹⁶⁷ providing additional accountability and transparency.

1. Board of Directors (BOD)

EIH governed by board of directors consisting of six members, who are appointed for renewed three-year terms.¹⁶⁸ The chairperson of the board is Prime Minister of FDRE, who also appoints board members.¹⁶⁹ The board's power and responsibility are clearly mandated in publicly available regulation.¹⁷⁰ The board is the main governing body ultimately responsible for the EIH performance, sets the strategy and a policy aimed at achieving the EIH's objectives.¹⁷¹ In addition, it adequately mandates to decide how to implement such strategies;¹⁷² Further delegate responsibilities to any person, committees, or institution as deemed necessary;¹⁷³ and appoints and removes the EIH management including, the CEO and the managers.¹⁷⁴

However, EIH board members' appointment does not have a legislative-specified selection process. In addition, under EIH regulation, there is no competency requirement for appointment to the EIH's BOD and CEO. Criteria such as education field, years of experience, levels, and not being a political party members are absent in the EIH legal framework, no guidelines to

¹⁶⁷ See, House of Peoples Representatives Legislative Procedure, Committees Structure and Working Proclamation No. 271/ 2002."

¹⁶⁸ EIHER Art 11(2)

¹⁶⁹ *ibid* Art.11 (2)

¹⁷⁰ *ibid* Art 12

¹⁷¹ *ibid* Art.12(1)

¹⁷² *ibid* 12(1)-12(20)

¹⁷³ *ibid* Art.12(19)

¹⁷⁴ IWG, 2008 (n28)16 (also See EIHER Art.12)

supplement that gap.¹⁷⁵ Minimum competency requirements for the board member and CEO are essential to perform its functions and to indicate the administration is professional in capacity.¹⁷⁶ Plus, In addition, the procedure for the removal of board members before the end of the term is need.

Regardless of the competency requirement, per regulation article 10, EIH's Board was appointed in early 2022.¹⁷⁷ H.E. Prime Minister Abiy Ahmed (Ph.D.) serves as the board's chairman; PM is the chief executive and chairman of the CMs.¹⁷⁸ Plus, the PM has shared the power with CMs on deciding the federal government expenditure and is responsible for the fiscal and monetary policy of the country.¹⁷⁹ H.E. Ahmed Shide, finance minister; H.E. Ambassador Girma Birru, macroeconomic advisor to the PM; Mr. Teklewold Atnafu, advisor to the PM board; H.E. Eyob Tekalign (Ph.D.), state minister of finance; H.E. Birhanu Nega (Professor.), education minister; Ms. Frehiwot Tamiru, CEO of Ethiopian Telecom; and Tegegnewrok Getu (Ph.D.), board director of DBE. BOD members had long experience in the financial sector or corporate finance. Based on publicly available information, BOD members typically have a wealth of international experience. They have all worked abroad or for the Ethiopian branch of a multinational company or public organization and consist of diverse educational fields; five members came from the economics professional field, one from information systems. Most BOD members completed at least part of their higher education at Addis Ababa University. The members of the BOD are personnel with professional capacity. However, most board members are government officials in higher government offices. There is no private sector representative on the board. Now days it is become common practice to include private sector representative in other similar business firm.¹⁸⁰

¹⁷⁵ Interview with Mr. Addis Berega, General Councilor, Ethiopian Investment Holding Main office, (Wingate Street, Hilco Building 5th Floor. Addis Ababa July 28, 2023)

¹⁷⁶ IWG, 2008 (n31) 16

¹⁷⁷ Board of Directors <https://eih.et/board-of-directors> accessed on September 29, 2023.

¹⁷⁸ FDRE Constitution Art 74(1)

¹⁷⁹ *ibid* Art. 51(2), 77(4)

¹⁸⁰ Wilson Ng (n64) 12

2. The Chief Executive Officer (CEO)

The investment choices of SWFs could be secure from improper and excessive political influence. As an owner, the government's responsibility is to choose the SWF's overarching policy goals; nevertheless, it is not its responsibility to get involved in choices regarding specific investments. The operational independence of the SWF's management is essential. There are a variety of mechanisms to ensure that.¹⁸¹

The EIH regulation has implemented a mechanism that assigns responsibility for managing the EIH to a separate entity headed by a governing body.¹⁸² This governing body has a clear responsibility to implement the broad investment mandate established by the government.¹⁸³ The CEO is the operational governing body of EIH and is responsible for developing the strategic vision and general investment policy in line with the objectives set out under the regulation and directions of the BOD.¹⁸⁴ In addition, the CEO is responsible for managing the day-to-day operations of EIH in accordance with the regulation and its strategic objectives.¹⁸⁵ The CEO is required to prepare and submit internal guidelines, as well as the work program and budget of EIHs to the board for approval and implement them accordingly.¹⁸⁶ Represent the EIHs in respect of its relations with third parties including legal proceedings brought by or against it, or delegate agents and legal representatives to act on its behalf.¹⁸⁷ Conclude all contracts, agreements, and transactions falling within the objectives of EIHs.¹⁸⁸ Hire, suspend and remove the staff of EIHs.¹⁸⁹ Cause to study and submit to the board's approval the salaries, bonus and other remunerations of the employee of EIHs; and implement same.¹⁹⁰ Open, operate, and close bank accounts for

¹⁸¹ IWG,2008 (n32) 16

¹⁸² EIHER Art 14 : IWG,2008 (n28) 16

¹⁸³ *ibid*

¹⁸⁴ *ibid* Art.14(1)

¹⁸⁵ *ibid* Art.14(2)

¹⁸⁶ *ibid* Art.14(3)

¹⁸⁷ *ibid* Art.14(4)

¹⁸⁸ *ibid* Art.14(5)

¹⁸⁹ *ibid* Art.14(6)

¹⁹⁰ *ibid* Art.14(7)

EIHs. ¹⁹¹Ensure proper books of accounts of the EIHS are maintained in accordance with internationally accepted accounting standards and any other national rules and regulations. ¹⁹²Submit performance reports to the BOD. ¹⁹³ And perform other duties assigned to him or her by the internal directives of EIHS. ¹⁹⁴

3. An Independent International Advisory Board (IIAB)

The law provided that an IIAB may be formed as a part of a governing body, when it deems it necessary. ¹⁹⁵Obviously, the establishment of IIAB can be performed by the board, which is the ultimate governance body of the company. It seems that clear procedures would be necessary to ensure the legitimacy of its corporate structure, which makes sense given its potential impact on the company's governance.

3.6. Audit and Disclosure

Transparency is the general principle of a democratic nation. It is one of the pillars of the FDRE constitution. ¹⁹⁶The law provides that the conduct of the affairs of government must be transparent; a public official or an elected representative is accountable for a failure. ¹⁹⁷ However, many claim low transparency in SWFs operations. ¹⁹⁸ Their legal structure and governance are distinct from those of the general government. Therefore, transparency is essential to ensuring the legitimacy of SWF-type business entities. The regulation includes multiple provisions for disclosure, as discussed above. Rule on standard disclosure and its related aspects of audits and periodic reports are vital to providing information about investments and performance. It has to

¹⁹¹ *ibid* Art.14(8)

¹⁹² *ibid* Art.14(9)

¹⁹³ *ibid* Art.14(10)

¹⁹⁴ *ibid* Art.14(11)

¹⁹⁵ EIHR Art.10(4)

¹⁹⁶ FDRE constitution Art 12

¹⁹⁷ *ibid* Art 12 (1)(2)

¹⁹⁸ Richard A Epstein and Amanda M Rose, 'The Regulation of Sovereign Wealth Funds: The Virtues of Going Slow' (2009) 76 *The University of Chicago Law Review* 111, 125–127

be crystal clear, fair, accurate, and comparable for accountability reasons.¹⁹⁹ The law also serves the purpose of good governance and ensuring accountability to the public. To that purpose, EIH utilizes, international financing reporting standard (IFRS).²⁰⁰

The regulation established a thorough audit procedure for EIH, its subsidiary companies, and sub-funds created by the company. Accordingly, the accounts of EIH are subject to audit procedures by internal and external independent auditors. Both internal and external auditors are to be assigned by the Board of Directors. In addition, EIH is subject to the audit procedure by a General Auditor (AG).²⁰¹ AG is the public statutory auditor of Ethiopia, which is among the most highly reputable institutions in the country. That is considered a bold move to ensure transparency and not a usual practice in other countries. The auditors audit the annual and quarterly financial statements.²⁰² Strict procedures are suggested for assigning the external auditors.²⁰³ The annual financial statements, the Auditor's report, and the detailed annual report or information about the activity of EIHs and its plan for the next year shall be submitted to the BOD within three months from the end of each financial year.²⁰⁴ In material terms, any asset under EIH will recorded in its ledger according to internationally accepted accounting standards.²⁰⁵

¹⁹⁹ IWG, 2008 (n27) 17–18 and 20

²⁰⁰ EIH's portfolio <https://eih.et/EIH-Portfolio> accessed on October 2, 2022

²⁰¹ EIH Art.18(1)

²⁰² *ibid* Art.18(2)

²⁰³ See IWG, 2008 18

²⁰⁴ EIH Art.18(3)

²⁰⁵ *ibid* Art.18(4)

CHAPTER IV

4. THE CONCEPT AND CHARACTERISTICS OF PUBLIC ENTERPRISES CORRELATION TO ETHIOPIAN INVESTMENT HOLDINGS IN ETHIOPIA CONTEXT: AN OVERVIEW

1. Introduction

This chapter delves into the concept and characteristics of EIH under the domestic laws of Ethiopia. Various ambiguities arose due to its form (designation), function, and organization. It is worthwhile to briefly examine what EIH is, how it is incorporated, and how it operates compared to another set of companies. To introduce the EIH and highlight the issue of whether the EIH could be referred to as a company under the existing laws of Ethiopia. Additionally, it is crucial to identify which legal framework applies to EIH in different scenarios, including registration. The first section covers public economic enterprise as a concept. The second section delves into the characteristics of Ethiopian investment holding. The third section discusses the legal basis of the form (designation) of EIH, its future, and its function.

2. Defining the term ‘public enterprise’

The need for a definition is not only academic, for it has far-reaching practical outcomes. Apart from ensuring conceptual clarity and delimiting the boundaries of the notion, practically in situations where the Auditor General’s exercise of power requires recognition of entities as public enterprises, where the law empowers a body to audit them, or when Parliament exercises its power to review performance or a regulatory organ, it is essential to distinguish the entities under such a law.

Moreover, the enjoyment of rights and the assumption of responsibilities (such as investment incentives, privileges, rights, and criminal liability of their officers) to public enterprises require pointing out the entity. For instance, the purpose of the definition of the term in criminal law is to establish liability for officials of such enterprises under certain circumstances. Identifying such enterprises is also essential for economic decision-making and statistical data on the size of the public sector to analyze economic implications and other issues. The same applies to developing

policies, strategies, and plans and undertaking comparative research studies.²⁰⁶ Unlike similar enterprises, such as business organizations, the attempt to distinguish an entity that can be considered a “public enterprise” may present challenges analogous to abstract concepts. Several reasons explain why it is difficult to define the term. Some of the reasons include the highly elastic nature of the notion, its contingency on local environments, the convergence of both public and enterprise aspects in a single entity, and the need to make it conceptually and operationally satisfactory. Further, the definition of variation is the outcome of the ideology, values, interests, dispositions, and circumstances that bring public enterprises into existence.²⁰⁷

The most effective and logical way of formulating a definition would be to identify the essential characteristics and the dependent and independent variables affecting the “public enterprise.” Generally, the term public enterprise refers to enterprises established under the ownership of the state or public authorities. However, the particular features of such enterprises are not the same in all definitions. For instance, the International Center for Public Enterprises has adopted the following definition²⁰⁸:

Any commercial, financial, industrial, agricultural or promotional undertaking – owned by public authority, either wholly or through majority shareholding – which is engaged in the sale of goods and services and whose affairs are capable of being recorded in balance sheets and profit and loss accounts. Such undertakings may have diverse legal and corporate forms, such as departmental undertakings, public corporations, and statutory agencies, established by Acts of Parliament or Joint Stock Companies registered under the Company Law.²⁰⁹

²⁰⁶ See V.V. Ramanadham (1984), *The Nature of Public Enterprise* (St. Martin’s Press), 61-63.

²⁰⁷ D. O. Adeyemo and Adeleke Salami (2008) *A Review of Privatization and Public Enterprises Reform in Nigeria*, *Contemporary Management Research*, Vol. 4, No. 4, December 2008 . 402,

²⁰⁸ Tewodros Meheret : *An Overview of the Concept and Characteristics of Public Enterprises in Ethiopia*, *MLR* Vol. 8, No.2 December 2014. 344

²⁰⁹ Prahlad K. Basu (2005), “Reinventing Public Enterprises and Their Management as the Engine of Development and “ in *Growth Public Enterprises: Unresolved Challenges and New Opportunities*, United Nations, 10.

This definition is broad enough to embrace all forms of public economic enterprises established across countries and ideologies. However, it does not hold in all legal systems because the peculiar factors of a country may prompt a definition that fits the setting. The law governing public enterprises (Proclamation No. 25/1992) defines it as “a wholly state-owned public enterprise established under the same Proclamation to carry on for gain manufacturing, distribution, service rendering, or other economic and related activities”²¹⁰ This definition encompasses three primary elements that determine the features of a public enterprise. The first element requires establishment under the proclamation. The proclamation sets the legal framework for entities established by the state for economic activities for gain. Their formation, operation, structure, and exit are requirements embodied in the proclamation. The government's act should indicate that the established entity is governed by this legislation. The second element relates to ownership and requires an enterprise to be wholly owned by the state. Thus, the mere being of a public investment share in an enterprise does not suffice unless the government is the sole owner. The law excludes enterprises in which we find the joint investment of the two sectors, namely, private and public, irrespective of the quantum of the investment. The third element is the purpose of the entity distinguishes it from the function of the state. Public enterprises are commercial entities, distinguished from administrative agencies, that carry out regulatory activities and render public service.

Regarding EIH, unlike the law governing public enterprises, Proc. No. 25/1992, EIH was created based on state organ establishment Proclamation No. 1263/2021 (EOP), and its function and organization are covered by Regulation No. 487/2022 (EIHER). The establishment laws didn't designate it as a public enterprise or indicate that the governing law is 25/1992. In fact, it is established in different legislation, and some forms of requirements for public enterprise structural organization are not present in EIH establishment legislation. Second, in terms of ownership, the state wholly owns EIH, but it also participates in public-private partnerships and

²¹⁰ Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51st year, No. 21 (Hereinafter referred to as Proc. No. 25/1992), Art. 2(1); Its predecessor defines the term as “any public enterprise established by regulations issued pursuant to this proclamation. Article 2(2) Public Enterprises Proclamation No. 20/1775 (Negarit Gazeta 34th year, No. 15 February 4, 1975); See also Regulations No. 5/1975 (Negarit Gazeta 34th, year, No. 31, June 4, 1975).

joint investments. Third, the function of EIH is distinguished from the state function; it has the purpose of serving macroeconomic purposes and engaging in investment activities, distinguished from administrative agencies that carry out regulatory activities and render public service. However, the minutes of the federal organ establishment proclamation hint at EIH as a public enterprise. So far, it is inadequate to conclude that it is a public enterprise.

Proclamation No.25/1992 - enacted in the transitional period, from command to a market economy in Ethiopia, transforming the role of public enterprise realized through Proclamation. Since then, many proclamations have introduced additions and exclusions, and the elements that distinguish one definition from another are diverse.²¹¹ Still, the definitions provided in those proclamations share features. Which is either expressly mentioned or impliedly incorporated in the definition of public enterprises embodied in Proclamation No. 25/1992.²¹²

3. Characteristics of Ethiopia Investment Holding

Ethiopia Investment Holdings as public enterprise described is necessitated by the need “to find an effective and efficient economic organization under socially satisfying conditions.”²¹³ Hence, the economic and social aspects converge in a single entity. It is a borderline entity sharing the features of a public entity and business. A public enterprise combines dual features (in status and functions) as enterprise aiming at profit while at the same time having public nature as a public entity.

It is suggested that the most operative methodology for identification is to specify the tests that need to be satisfied if EIH can accurately be described as a public enterprise. To this end, certain tests can be applied, namely the ownership test, the public purpose test, the field of activity test, the concept of investment and return, the concept of marketing, and the commercial accounts.

²¹¹ Tewodros Meheret. (n217)334

²¹² *ibid*

²¹³ See Pavle Sicherl (1981), “Concepts of Public Enterprise in Different SocioEconomic Systems” in Praxy Femandes and Pavle Sicherl (ed.), *Seeking Personality of Public Enterprises (International Center for Public Enterprises in Developing Countries)*, 80

These tests are believed to enable us to conceptualize the notion of public enterprises and have a better understanding of the EIH based on its features.²¹⁴

2.1 Public Dimension

a) Purpose

A public enterprise has multiple purposes, including public purpose. One of the conceptual differences between public and private enterprises is their designated purpose.²¹⁵ The establishment of a public enterprise usually presupposes the attainment of some public policy goals. The rationale for setting up these enterprises is that they are better instruments to promote developmental goals, which could be reflected in the corporate objectives or the allocation of resources within the enterprise.²¹⁶

EIH was setting up for the attainment of three policy objectives, This are to serve as a strategic investment arm of GOE. unlike ordinary enterprise ,which is providing public utility EIH focused on diversified commercial investement in order to achive economic development in long therm . This mainly acomplish by raise revenue for the development program and to contribute to sustainable economic development through the professional management of its funds and assets, Provide a strategic vehicle for attracting foreign investment through partnerships, joint ventures, and cooperation.

b) Ownership

The public ownership of public enterprises is a manifestation of the public dimension of public economic enterprises. Sometimes, there is a distinction between ownership in the legal sense as a formal claim under the legal order and ownership in the economics sense, which examines the actual beneficiary of the thing. The word “public” is therefore accustomed to “or about the people, relating to or belonging to, or affecting a nation, state, or community at large as opposed

²¹⁴ Praxy Femandes (1981), “Public Enterprise: A Word and a Vision,” in Praxy Femandes and Pavle Sicherl (eds.), *Seeking Personality of Public Enterprises* (International Center for Public Enterprises in Developing Countries).

²¹⁵ Pavlve Sicherl (n229) 81

²¹⁶ Tewodros Meheret (n217)

to private.”²¹⁷The public is presumed to exercise ownership through the state, the government, local authorities, or municipalities.

EIH is an institution established by specific legislation that commenced its operation with government-authorized capital in a legal sense that is wholly state-owned.²¹⁸ An enterprise becomes public if it is wholly owned by public authorities. In other words, there will usually be no doubt about the nature of an entity if ownership exclusively belongs to a public authority. In this regard, Proclamation No. 25/1992 is explicit and considers only those wholly owned by the state as public. Hence, the public nature of EIH is not doubtful. However, in situations of partial ownership by EIH, things become a little ambiguous, i.e., EIH may establish an independent entity through a joint venture or public-private partnership arrangement as a source of funds. One can argue that a majority shareholding is sufficient to be considered public. There is the view that as long as other elements are satisfied, even minority shareholding is adequate for being public. There is a view that the majority shareholding should be measured, which enables control.

Another issue is the status of indirect ownership of another enterprise by EIH, which is worth discussing. EIH, with its subsidiary, has the mandate to establish a new entity. Does this new enterprise confer the status of public character because the ownership share of such an enterprise is a state or nearly owned by EIH. This is little bit contested. For instance, EIH has shares in the Ethiopian Securities Exchange (ESX) (share company).²¹⁹ EIH establishes EXC in its capacity as a separate entity. In this regard, ownership should be limited to direct ownership, even though the ultimate beneficiary from that investment is the state.²²⁰ However, regardless of the issues, it

²¹⁷ Pavlve Sicherl (1981), (n229)“; Identification of the owner is not that easy. It is inquired whether the owner is the legislature, the executive, workers, consumers or capital providers. See Tansu Ciller(1981),, “Classification and Taxonomy of Public Enterprise-An Explanatory Perspective” in Praxy Femandes and Pavle Sicherl(ed.), Seeking Personality of Public Enterprises(International Center for Public Enterprises in Developing Countries), 186.

²¹⁸ EIHER Art.6(1)

²¹⁹ Ethiopian Securities Exchange Closes its capital Raise Significantly Domestic and foreign Investors ,Press release
press release A pril4,2024 Addis Ababa ;ECX is established through a public-private arrangement 25%
government share and 75% private sector share holding

²²⁰ See Tewodros Meheret (n217)) 345

can be argued that the form (designation) of EIH as a holding company can accommodate different statuses.

c) **Public Control and Management**

The innate power of governments enables them to exercise control over private or public enterprises. However, when it comes to public enterprises, the control it has as an owner involves an “agent-principal” relationship between the government and the enterprise.²²¹ As enterprises are controlled by people who have invested in them, government control over public enterprises is primarily practiced through its power to appoint top management.²²² A public enterprise is controlled and managed by the government (owner). For instance, the relevant public authority. Hence, one of the items to be stated in the establishing legislation is the name of the supervising authority, which protects and promotes the interests of the public in the enterprise.²²³ The designated public authority is responsible for appointing and replacing the board members, who are empowered to appoint and direct the management of the enterprise.²²⁴ It also appoints external auditors and approves financial reports of the enterprise, external audit reports, and the investment plan of the enterprise submitted to it by the board.²²⁵ It is through these tools that public authorities control public enterprises.

EIH has a public character of public control and management in its future. However, unlike Proclamation No. 25/1992, the public control and management government directly manages EIH. Unlike public enterprises, whose management is appointed and replaced by supervising authorities, EIH does not have supervising authority. The board assumes management authority. The board's chairperson position is assigned to the prime minister by regulation and has the

²²¹. Leroy P. Jones(1981),, “Definition and Taxonomy of Public Enterprise” in Praxy Femandes and Pavle Sicherl (ed.), Seeking Personality of Public Enterprises(International Center for Public Enterprises in Developing Countries), 124

²²² *ibid*

²²³Tewodros Meheret (n217)) 345

²²⁴Proc 25/92 Article 11(1).

²²⁵EIHER Article 11(6), 9, 10.

power to appoint or replace other board members.²²⁶ EIH's management comprises a board of directors and a chief executive officer.²²⁷ The board is responsible for all activities and performances.²²⁸ The CEO is responsible for daily operational activities.²²⁹

At this point, one can argue that it is a different type of economic entity. On the other hand, one may suggest that though it is distinct, it does not change the manifestation of public character. The board, which is presided over by the prime minister, can exercise the management of public enterprises as a state agent. Despite that, recently, EIH disclosed the replacement of the chairperson.²³⁰ From the standpoint of the law, the possible scenario could be delegation.²³¹ The board itself can't change the organization of the company. Any change or amendment of the regulations establishing such statutory companies has to go through the formal procedure of amendment of regulation by CMs.²³² Also, the recent development does not affect the distinct features of EIH compared to other public enterprises.

4.2. Private dimension of EIH

Public economic enterprises have a dual nature in the features of a business enterprise, as well. The entity preserves its public features without at the same time undermining its enterprising dimension. The government chooses the entities in this form to enable them to operate as business entities. Public enterprises operate in the same manner as private enterprises engaged in commercial activities. Regarding EIH, it confers a public element on public enterprises. Thus, it has the following attributes:

²²⁶ EIHER Article 11

²²⁷ *ibid* Article 10

²²⁸ *ibid* Article 12

²²⁹ *ibid* Article 14

²³⁰ EIH's Post LinkedIn account accessed on April 14, 2024.

The deputy prime minister replaced the prime minister

²³¹ EIHER

²³² Getahun Seifu, "Revisiting Company Law with the Advent of ECX", *Mizan Law Rev.*, Vol. 4(1), 111.

a) Commercial Nature

Public enterprises are created to undertake manufacturing, distribution, service rendering, or other economic and related activities to sell goods and services.²³³ These activities are carried out for profit to ensure that there is a return on investment. This confers on them a “commercial nature,” making them subject to the rules of the market. Their commercial character is evident in different forms.

First, the formation, an association of persons, established through a memorandum, who bring together contributions for undertaking an economic activity in cooperation and participating in the profit made.²³⁴ in a holding company, company grouping, In the case of a public enterprise established by the government disposed of capital to engage in commercial activity,²³⁵ This commercial nature public enterprise confers on them the attribute of company which is separate personality, limited liability after which the enterprise is expected to sustain and develop itself through its profit.. That is why the law makes it a ground for dissolution if a public enterprise loses 75 % of its capital.²³⁶ a public enterprise may encounter bankruptcy if it suspends payment.²³⁷ Its survival thus depends on economic viability at least to the threshold of maintaining its capital. EIH established in law by the government disposed of capital, to engage in investment activity consisting of managing portfolios and any profitable investment. These activity is a trade activity under commercial code.²³⁸ The commercial nature of public enterprise and related aspect similarly apply to EIH.²³⁹ Moreover, This distinguishes public economic enterprises from administrative authorities which receive annual budget allocations from the State. Unlike ordinary public enterprises, they provide utilities. EIH aims to diversify state investments, and its source of funding is distinct.

²³³ Proclamation no 25/1992, Art. 2(1).

²³⁴ Commercial code Art.172 (1)

²³⁵ Proclamation no 25/1992, Art. 47(2)(a).

²³⁶ Proc. 25/1992, Art. 39(4). EIHER Art 3 (4),

²³⁷ Proc 25/1992, Art. 40.

²³⁸ Article 5 and 9 (1)

²³⁹ EIHER Art 3 (4), Proc. 25/1992, Art. 39(4).

Second, the business firm can't to engage in trade activities without registration in the commercial register.²⁴⁰ As a result, public enterprises are need to register in the commercial register of the federal government or regional state, as the case may be.²⁴¹ In addition, to carrying out business activities it also needs to have a license. For the same reason, EIH is obliged to register on commercial registration.

The third manifestation of a public enterprise's private dimension relates to its competitiveness in the market. Any business entity markets its output, whereas a public service institution provides these outputs free of charge.²⁴² Even though public enterprises, including EIH, address social purposes, they cannot survive unless there are schemes to compensate for the losses sustained while undertaking unprofitable activities. The mere fact of an arrangement as a public enterprise demands that they set prices based on the market unless the government decides to subsidize the enterprise, as in the case of certain public utilities.

(b)The accounting concept

Ethiopian investment holdings similar to Public enterprises and other government institutions are subject to different accounting systems. The establishment of EIH is contingent upon its capital, which is indispensable for its existence.²⁴³ Furthermore, its capital is security for its creditors because of its limited liability. ²⁴⁴Due to Their commercial nature, the law requires them to maintain two books of account, i.e., a balance sheet and a profit and loss account. They should also follow generally accepted accounting principles in maintaining financial records and preparing financial documents.²⁴⁵

A public enterprise is required to close its accounts at least once a year. EIH's annual financial statements, the auditor report, and the annual performance report and its plan for the next year

²⁴⁰ Commercial Registrations and Business Licensing Proclamation No. 980/2016 Article 5(1), Regulation No 392/2016 Art 12(1)

²⁴¹ibid, Art. 22(1) , Regulation No 392/2016 Art 26

²⁴² Praxy Femandes and Pavle Sicherl (1981),(n216) 21

²⁴³ Proc . 25/1992Art. 19(1). EIHER Art.6(1)

²⁴⁴ ibid Art 6(6), EIHER Art.15

²⁴⁵ ibid Art. 27, EIHER Art. 18

shall be submitted to the board within three months from the end of each financial year. Unlike other public entities which utilize their budgets, an enterprise shall pay government dividends within seven months following the end of the financial year.²⁴⁶ Distinguishable from enterprises, EIH will pay dividends to the government under the dividend policy of the board.²⁴⁷ The relevant laws concerning taxes and duties apply to enterprises and EIH,²⁴⁸ except EIH income earned from dividends from AUM is exempt from tax, duty, and the like.²⁴⁹ The accounts of public enterprises must be audited by external auditors appointed by the supervising authority.²⁵⁰ The accounts of EIH are subject to audit procedures by internal and external auditors appointed by the Board of Directors.²⁵¹ All these duties are incidental to the commercial aspect of EIH as a public enterprise and do not apply to other government institutions.

4.3 The Forms of EIH (Holding Company)

In Ethiopia, public economic enterprises are present in various legal forms. The legal form of a public enterprise is presumed to have an effect on its management autonomy and the amount of government intervention or other agency.²⁵² However, the unavailability of clear elements of delimitation that explain the selection of a specific organizational form makes it burdensome to identify the cardinal distinction between these different forms.²⁵³ Fundamentally, the entities are subject to the same legal regime despite their variation in designation. The lack of policy parameters to opt for specific forms in the country.²⁵⁴ and the choice of holding company form of

²⁴⁶ Proclamation No. 25/1992, Art. 47(2)(a). Art. 31.

²⁴⁷ EHER Art 12 (14)

²⁴⁸ Proclamation No. 25/1992, Art. 30

²⁴⁹ EHER Art 16 (1)

See ,Federal Income Tax Proclamation No.2016 Federal Negarit Gazeta,22nd Year No. 104 Art 18,usually,a dividend income is taxbel income ,

²⁵⁰ Proclamation No. 25/1992, Art.. 32

²⁵¹EHER Art. 18(1)

²⁵² V.V. Ramanadham (1986), Public Enterprise Studies in Organizational Structure (Franc Cass & Co. Ltd.), 13

²⁵³ Tewodros Meheret (n227) 350

²⁵⁴ *ibid*

EIH resulted from specific considerations that raised doubt. Hence, we are limited to clarifying the features and autonomy of holding companies and research studies on other countries' experiences.

The law recognizes the government's option to set up a business firm under the commercial code.²⁵⁵ Hence, the government can establish a public enterprise and convert it to a business organization under the Commercial Code. Thus, public enterprises are companies established by law that must be subject to the same legal regime (Commercial Code) applicable to other companies.²⁵⁶ However, public enterprise has its peculiarities. Even if the law provides for the formation of a public enterprise as a business organization, it is not specific about the form of business organization chosen out of the forms recognized under the Commercial Code

The new commercial code recognizes holding company form. EIH is established as a business firm in the form of a business organization and is designated to be a holding company. Holding is one distinct form of business organization or grouping of companies.²⁵⁷ The commercial code, registration, and licensing laws recognize holdings as a group of companies.²⁵⁸ Regarding EIH, the grouping requirement of the holding company is not satisfied in the strict sense of commercial code. However, from the above discussion, the grouping requirement in company law does not apply to established (designation) holding companies for a public enterprise economic entity.

²⁵⁵ Proclamation no 25/1992, Art. 47(2)(a).

²⁵⁶ Tewodros Meheret(n217)

²⁵⁷ Commercial code 550(1)

²⁵⁸ In the commercial registrations and business licensing proclamations No. 980/2016, Art. 34(1), and Regulation No. 392/2016, Art. 37, only private limited companies can form and be registered as holding companies. However, under the commercial code, Art. 550(5), for holding, the term "company" refers to a share company, a private limited company, or a one-person private limited company. Therefore, legal scholars argue that it needs interpretation to apply the cardinal interpretation rule that the special prevails over the general and the latter prevails over the earlier. Hence, those recognized three companies in Ethiopia can form a holding company .

The Ethiopian commercial code defines a group as an economic entity comprising a parent company and its domestic and foreign subsidiaries.²⁵⁹ The term parent company refers to a company that has subjected another company to control either directly or indirectly through the instrumentality of another company.²⁶⁰ A subsidiary company is subject to the control of another company, the “parent” company, either directly or indirectly through another company.²⁶¹

The grouping of companies may be distinct upon the grouping requirement established based on the legal concept of control.²⁶² A wholly owned subsidiary is a company with no other shareholders except its parent company and any other subsidiary of its parent company or persons acting on behalf of its parent company or other subsidiaries.²⁶³ Relative companies (Controlling and Controlled Companies) are companies with another shareholder in addition to the parent company and another subsidiary of its parent company or persons acting on behalf of its parent company or other subsidiaries.²⁶⁴ The extent of control to establish group relationships defined many borders in the company law of Ethiopia.²⁶⁵ Ethiopian investment holdings control (hold) wholly owned subsidiaries, those transferred by Council of Ministers decision and relatives companies, those newly established like EXC, Topan Gravity Ethiopia

Group of company law concerns the corporate law provisions aimed at assisting businesses and the economy by recognizing an organizational form and facilitating group management.²⁶⁶ In the context of Ethiopia, the commercial code embodies provisions that promote holding by facilitating group management. For instance, the holding company has the power to give such

²⁵⁹ Commercial code 550(1)

²⁶⁰ *ibid* Art.550 (3)

²⁶¹ *ibid* Art.550 (2),(3)

²⁶² የንግድሕግ ማሻሻያ የፖሊሲ ሰነድ የንግድሕጉን ለማሻሻል የቀረቡ የፖሊሲ ነጥቦች አጭር ማጠቃለያ (Executive Summary) በንግድ ሕግ ማሻሻያ የፖሊሲ ሰነድ አዘጋጅ የቴክኒክ ኮሚቴ አባላት የተዘጋጀ መጋቢት 2006 ዓ.ም. ቢሮ

²⁶³ Commercial code 551

²⁶⁴ ²⁶⁴ *ibid* Art 552

²⁶⁵ See *ibid* Art 552

²⁶⁶ Klaus J. Hopt Groups of Companies A Comparative Study on the Economics, Law and Regulation of Corporate Groups Working Paper N°. 286/2015 February 2015. 3

things as a right to instruct the management of the subsidiaries, access to information from the subsidiary, and power to squeeze out.,²⁶⁷

In terms of activities, a holding company is a company that typically confines its activities to owning stocks or shares in and supervising the management of other companies. In the Commercial Code of Ethiopia, a holding company holds shares in business organizations and may render services by engaging in activities specified under Article 5 of the Commercial Code.²⁶⁸ The mandate for Ethiopian investment holdings encompasses portfolio management and investment activities.²⁶⁹ This mandate is in line with the commercial code of the holding company. Thus, EIH seems to be a mixed type of holding, also known as operational holding.²⁷⁰ Hence, EIH regulation regarding EIH power and responsibility directly refers to the provision of the power and responsibility of the holding company in the commercial code.²⁷¹ The form of a holding company has an advantage as a company in general and specific functions. For instance, holding companies share the characteristics of general companies, such as limited liabilities, perpetual existence, and professional management. Moreover, the literature describes specific benefits of private holding forms (greater control, independent entities, management continuity, and tax effects).²⁷² This benefit holding form is the immersed characteristic of a public holding form.

The initial reasons for the government establishing a public holding company varied according to the purpose of public enterprise reform in policy documents. The country's experience shows. The first motive for setting up a holding company is to seek a method of controlling several public enterprises because government ministries find it difficult and inefficient to deal with numerous firms directly. Achieving synergies through integration within the sector or actively providing integration is a second reason for state-holding companies. The third possible

²⁶⁷ Commercial code Art. 556, 557,558

²⁶⁸ *ibid* Art.9.sub (1),(2)

²⁶⁹ EIHER Art.9. ((1)(a,b I)

²⁷⁰ See CFI <https://corporatefinanceinstitute.com/resources/management/holding-company/>

²⁷¹ *Ibid* Art.9. ((1)

²⁷² Wedawit Tekelezegi The Law and Practice Relting to Holding Companies in Ethiopia (LLM Thesis

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motivation is the arm-length management of enterprises, permitting gradual exposure to the market; this is the classic case for promoting greater economic efficiency. Fourth, the holding company may establish the management of government assets to increase the financial return on government investment in these enterprises; this is relatively more recent. The fifth objective encountered in setting up state holding companies is to transfer or restore public enterprises to private ownership, with or without their prior restructuring.²⁷³

In Ethiopia, the experience lesson on purposes of state-holding seems generally incorporated; this may be because of the interrelated characteristics of holding. As we can see from the regulation preamble,²⁷⁴ For instance, gathering various state-owned assets under one legal entity serves as a means of controlling the number of public enterprises. Second, ensuring that resources owned by the government can provide holistic and sustainable economic benefits through integrated strategic control seems to achieve synergies through integration within the sector. Moreover, The third possible motivation is the arm-length management of enterprises explained in the regulation to uphold and incorporate strong corporate governance principles to instill commercial and investment discipline in the management of state-owned assets and resources. The fourth objective of increasing financial return on public assets seems to be the prior linkage to the purpose of EIH. By creating a co-investment platform intended to attract private investment, public-private strategic joint investment, and optimization of the value of the range of state-owned assets through coordinated strategic oversight, The policy document also mentions the need for public enterprise reform to increase the state's financial supply.

²⁷³ Anjali Kumar. *State Holding and Companies and Public Enterprises in Transition* St.Martins press,1993. 11

²⁷⁴ See EIH Regulation preamble

CHAPTER V

5. CONCLUSION AND RECOMMENADTION

5.1 Conclusion

The study attempt to articulte Ethiopian Investement Holdings in interntional and ethiopian context of laws. SWFs are financial vehicle commonly incorporated to utilize surplus natural resources or excess foreign currency reserves. However, increasing number of countries, including Ethiopia utilized SWFs for various purposes despite lack of such resource. EIH can be one exampel of SWF established by government to promote economic growth and development. EIH is wholly owned and managed by central GOE, and participates in investment activity for public purposes. Serve as a strategic arm of GOE and an instrument to attract FDI and maximize the value of public assets. with a mandate to engage in domestic and foreign investment activity. It is SOE's type of sovereign investment vehicle. The source of funds was a pool of giant SOEs, ensuring that investments align with the government's priorities and objectives. Based on prior objectives, EIH is a strategic economic development fund. EIH's legal framework appears well balance legitimacy and sustainable development. EIH, established by public law, laid out the form, the structure, and the relationship with other state bodies, lined up with the government budgetary process, and legally established the transaction and benefit. The EIH governance structure set out in regulation follows corporate governance principles. The board is ultimately responsible for all activities and performance of EIH. The CEO is responsible for daily operational activities. However, the regulation did not specify the competency requirements for the members of the BOD and CEO, it is vital to indicate a professional administration of the fund. Nonetheless, the EIH audit framework is relatively transparent; all asset recording must be by an internationally accepted recording standard, and the financial statement is subject to audit by internal, external, and statutory auditors. The regulation addresses SWF's intimate legitimacy concerns about transparency, accountability, and utilization of the fund for purposes other than economic and financial. All the things considered EIH legal framework seems reasonably aligned with state practice (GAPP), fundamental principles of law, but could benefit by adopting a few best practices to ensure professional administration of the fund. The practical application of the law is crucial and could be productive for Ethiopia and other stakeholders.

In Ethiopia law, EIH has characteristics as a public economic entity with dual dimensions, private and public, which satisfy the public character of public enterprise with distinct features of public control and management. The designation of EIH as a holding form can accommodate managing portfolios, setting up entities, or participating in investments in different statuses.

5.2. Recommendations

Upon careful analysis of the research findings, the researcher recommends revisiting the EIHR surrounding board members and CEOs. Specifically, a well-defined competency requirement is to be put in place, which would entail mentioning educational background, years, and type of experience, and ideally avoiding political affiliations. Alternatively guidelines could be added, to supplement this requirement.

Additionally, the study suggests that the guidelines for selection procedures for board members and CEOs should include private sector personnel's experience with corporate management, preferably those with SWFs' experience responsible for operations.

EIH should disclose top executives members to the public on its website

Revisiting the public enterprise proc No 25/992 to include other public economic entity

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