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An Evalation With Regarding to Turkish Wealth Fund: Aims Activities and Legal Status

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Abstract

For supporting major projects and to prevent short term economic shocks&volatility, seventy-seven national wealth funds to be functioning at international level financial markets. Upon legalization of National Assembly of Turkey during August 2016, Turkish Sovereign Wealth Fund was established. In the first section of the study, we will evaluate juridical personality of this institution, its aims, its functions and at the final part, we will discover historical development and progress of the Wealth Fund, also scrutinize four sovereign wealth funds. Another topics to be presented is its resources and expectations with regarding to Wealth Fund. Finally, we will discuss the impact of regional and international welfare funds on possible problems and possible solutions.

Keywords: Wealth Fund, Turkish Wealth Fund Public Limited Company, Legal Personality

Türkiye Varlık Fonu Anonim Şirketi Üzerine Bir Değerlendirme: Amaçları, Faaaliyetleri Ve Hukuki Kişiliği

Öz

Makalenin Büyük projeleri finanse etmek ve kısa vadeli ekonomik şokları ve finansal piyasa dalgalanmalarını dengelemek için, kırkdan fazla ülkenin ev sahipliği yaptığı yetmiş yedi varlık fonu uluslararası olarak faaliyet göstermektedir. Türk Varlık Fonu, 2 Ağustos 2016 tarihinde TBMM'ye yapılan bir tasarı ile kurulmuştur. Bu çalışmada, öncelikle dünyanın dört bir yanındaki egemen varlık fonlarının kurulması, daha sonra gelişimi ve tarihsel ilerlemesi ve nihayetinde Türk Varlık Fonu'nun amaçları, işlevleri, tüzel kişiliği, dolayısıyla da temel özellikleri, kaynakları, hedefleri ve işlevselliği ve ayrıca Varlık Fonu'ndan beklentileri ortaya koymaya çalışılacaktır. Son olarak, bölgesel ve uluslararası ölçekte varlık fonunun olası sorunları ve muhtemel çözümleri ile etkilerini tartışılacaktır.

Anahtar Kelimeler: Varlık Fonu, Türkiye Varlık Fonu Anonim Şirketi, Hukuki Kişilik

INTRODUCTION

Across the globe, many different countries are taking benefit from National Wealth Funds (NWF). NWFs are getting popular and it can be seen that they are bringing some important questions onto the table.

National Wealth Funds can be thought as national saving and investment mechanism. Those funds can include real and financial assets. From historical perspective, NWFs are getting cash flow firstly from energy products, apart from that they have other resources like commodity export income, budget surplus, retirement fund surplus and official reserves.

Academic studies and discussions with regarding to National Wealth Funds are relatively new. The funds started to increase in terms of number and size after 90's and especially after 2008 Global Crisis they took new shape. Since NWFs belong to governments, not just economic or financial studies took place but also studies like international relations, law, international law and political science are approached by experts. But in Turkey studies with regarding to NWFs are extremely limited.

The Turkish Wealth Fund Public Limited Company (P.L.C.) which established recently and not having any operational business currently created many different question marks. In this study, firstly we will try to address what Turkish Wealth Fund is and its short history. After that, purposes of Turkish National Wealth Fund and its activities, then its legal personality, its qualities and control mechanism will be debated. Finally, results of establishment of Turkish Wealth Fund P.L.C. will be examined.

WHAT IS NATIONAL WEALTH FUND

It is now new that countries are investing their savings and we can see this reality in totally different forms. It can be emphasized that national funds are just one of the investment styles.¹ There are general and spesific definitions with regarding to national funds, some general definitions express that national funds are just operating normal governmental activities but on the other hand spesific ones say that national funds has spesific purposes. The most general definitions are “*private government funds with special purposes*”,² “*fund of countries which is*

¹ Meltem Kayıran, “Türkiye Varlık Fonu’nun Kuruluş Amaçları ve Yapısı Üzerine Bir Değerlendirme”, Eğitim Bilim Toplum Dergisi / Education Science Society Journal, Cilt / Volume:14 Sayı / Issue:56 Güz / Autumn: 2016 Sayfa / Pages: 55-90, pp. 57-58.

² IWG (2008), “Sovereign Wealth Funds Generally Accepted Principles and Practices ‘Santiago Principles’”, International Working Group of Sovereign Wealth Funds. www.iwg-swff.org/pubs/eng/santiagoprinciples.pdf, p. 27.

getting more reserve than what reserve central banks get”³ or “fund which is directed over global investment tools”⁴.

Globalism, not just strengthened the USA but also fortified private sector against government. Acceleration of private sector left the government passive and this development made the state searching for new possibilities. Thanks to established wealth funds, governments have a saying over financial markets.⁵

Wealth funds belonged to the governments and this type of funds consist of balance of payment surplus, currency operations, privatization income, export income etc. According to definition of US Treasury, wealth fund is composed of currencies and directed separately than other kind official reserves. National fund is relatively new concept and that's why it doesn't contain traditional assets like public corporations, pension funds, saving funds and central bank resources. Since wealth fund is different than traditional ones, it can tolerate highly risky operations and as a natural result of all those mentioned qualities, wealth funds are managed by different laws, of course this legal regime differs according to the country.⁶

Because primary purpose of wealth funds is getting profit, wealth funds are independent from institutions like central bank or ministry of public financing and they have institutional identity. Since their perception of risk is different, they invest in new financial tools and their operations have international side, thanks to that mentality, they can perform low risk high yield logic. Wealth funds are also independent in terms of oversight and control from global institutions like IMF or World Bank. Another purpose of wealth funds is fortifying the local markets.⁷

There are two types of wealth funds; in first type, the wealth fund is dependent on commodity like petroleum and in the second type, the fund is based on balance of

³ Csoma, R. (2015), “Appreciation of the Role of Sovereign Wealth Funds in the Global Economy”, Public Finance Quarterly, (Cilt: 2), 270-287, p. 271.

⁴ Kayıran, p. 58.

⁵ Stephen Jen, (2007) “Sovereign Wealth Funds What they are and what's happening” *World Economics*, Vol. 8, No. 4, October–December, <http://www.afi.es/eo/SOVEREIGN%20WEALTH%20FUNDS%20STEPHEN%20JEN.pdf>. (last visited: 20.09.2017)

⁶ What is Sovereign Wealth Funds, <http://www.swfinstitute.org/sovereign-wealth-fund/>; Fox, Ira M. and DelVecchio, Philip and Khayum, Omar and Gatenio, Carl and Blackburn, John and Wolfson, Daniel, Do Sovereign Wealth Funds Best Serve the Interest of Their Citizens? (March 24, 2008). p. 2; Available at SSRN: <https://ssrn.com/abstract=1309285> or <http://dx.doi.org/10.2139/ssrn.1309285> (last visited: 20.09.2017)

⁷ Kayıran, p.58.

payment surplus. In first type, Gulf countries can be example and for the other one Singapore or China.⁸

Since wealth funds are generally composed of commodity income like petroleum or gas income, whenever a fund is based on another income type, it can raise several questions. It isn't seen frequently that a fund isn't based on exchange or commodity surplus but on the other hand, it can be perceived as new investment model too.⁹

Due to opaque structure of wealth funds, some questions can be brought to the table and from time to time politicians can express their opponent ideas against wealth funds. For example in the United States, there is a legal code for foreign wealth funds, thanks to that, wealth funds would be more transparent but so far any evidence for wealth funds couldn't be found which is stating that the funds acting with hostility and political intentions.¹⁰

BRIEF HISTORY OF WEALTH FUNDS

Whereas wealth fund idea can be traced back to Permanent School Fund in Texas, USA by 1854 or university fund by 1876,¹¹ actually the first real wealth fund was established in 1953 by Kuwait. The main purpose of the wealth fund was to manage the petroleum income surplus, in 1983 the name was changed to the Kuwait Investment Authority.¹²

Even though several wealth funds were established later on, the real change happened during 2000's. Currently there are 77 national wealth funds. By February 2017, it is estimated that approximate size of wealth funds are currently 7.4 trillion dollars. Experts think that size of wealth funds based on commodity is approximately.¹³

Concept of national wealth fund isn't new, the story goes back 30-40 years ago. Originally it was designed to defend against petroleum volatility. Since petroleum price is increasing steadily and continuously, new plan was devised. According to new plan, the purpose would be saving wealth. The new practice about wealth funds was transferring budget surplus of Asian Central Banks to related funds. This change with regarding to wealth funds made national wealth funds new

⁸ An Introduction To Sovereign Wealth Funds, <http://www.investopedia.com/articles/economics/08/sovereign-wealth-fund.asp> (last visited: 21.09.2017)

⁹ Jen, p.2; Kayiran, p. 58.

¹⁰ An Introduction To Sovereign Wealth Funds, <http://www.investopedia.com/articles/economics/08/sovereign-wealth-fund.asp> (last visited: 20.09.2017)

¹¹ Kayiran, p. 59.

¹² Alhasel, B. (2015), "Sovereign Wealth Funds: A Literature Review", Journal of Economics and Business, (Cilt: 78), 1-13. p 2; Kayiran, p. 59.

¹³ Fox, Ira M. vd., p.3.

actors of economic system. In today's world, national wealth funds surpassed hedge funds and private equities. Wealth funds which belong to Norway, United Arab Emirates and China have a difference from other wealth funds in terms of size, it is estimated that each of them is approximately has 800 billion dollars value.¹⁴

In some countries, there are wealth funds more than one. In this case, it is possible to say that each of wealth funds has different purpose or different rules are applied. For example, United Arab Emirates has three, Singapore has two wealth funds.¹⁵

At very beginning, there were just several NWF's, but currently those funds are able to direct global financial system due to their huge sizes. Main reasons of wealth fund rising can be attributed to high increase in petroleum prices, dynamics of global economy and financial crises. At the first part 1990's, most of the neighbour countries were having current account deficit, later on the situation went opposite direction and those countries started to give current account surplus especially after 1997 Asian crisis and they started to save high level of reserves. Having large number of reserves can be effective against currency volatility and crisis but at the same it is costly to have low in liquidity funds. Many authors state that new NWFs are established because income surpluses are taken from central banks and being given to NWFs. This situation accelerated NWFs spreading towards Asian countries having current account surplus.¹⁶

National wealth funds bought stocks of highly depreciated financial establishments after 2008 crisis and this situation made them earn much higher values. From 2008 to 2012, their value increased almost 60 percent. But of course that kind of purchases were seen as foreign intervention according to some parties.¹⁷

AIMS AND ACTIVITIES OF THE TURKISH WEALTH FUND

Despite the fact that wealth funds in international context can be traced back to 1950's, concept of national fund in Turkey is really new. With 217 ayes against 22 nays, the law draft passed in the Grand Assembly on 19 August 2016 and announced in the Official Gazette by the name of Wealth Fund Administration Public Limited Company of Turkey, with that it became completed. Before, Turkey Wealth Fund Inc.'s management was under Prime Ministry of Turkey but since the political system changed in Republic of Turkey, the Fund was connected to Presidency by September 11, 2018 Presidential Decree No. 2018/162. According to the second paragraph of Article 1 of the Decision, the head of the

¹⁴ Jen, p. 2.

¹⁵ Sovereign Wealth Funds Rankings, <http://www.swfinstitute.org/sovereign-wealth-fund-rankings/> (last visited: 23.09.2017)

¹⁶ Kayıran, p. 62.

¹⁷ Kayıran, p. 62.

company's board of directors is the President of Turkey. One of the members of the board of directors is appointed as vice-president by President of Turkey.

Aims

While the wealth fund can have several purposes, there are two main aims of wealth funds; first one is increasing welfare level of the state and citizens and the second purpose is to keep the economic system strong during crisis. Moreover, it can be said that traditional economic tools are insufficient in a developing world.¹⁸

The first argument which was put forward by government and placed in law draft was the Turkey was the only country which didn't have wealth fund among G-20 countries. From that perspective, we can understand that the Turkish Government wanted to have similar economic tools with other developed countries.¹⁹

Fund type of Turkish Wealth Fund is another issue, since the Fund is unsimilar with traditional fund types.

Even though it is stated about purpose of Turkish Wealth Fund that,

“Turkey, especially as public administration, has various and large number of asset portfolio. Apart from that there is growing fund market based on incentives and pension system. In the current system, it is observed that public income and fund surpluses are directed into different kind of investment tools. Mentioned funds and a fund which can be used for long term-real sector will be put together and it will be employed for 2023 targets of Turkey.

We can't evaluate Turkish Wealth Fund as traditional since the country has history of current account deficit and not having currency surplus. But still, coming soon, it is expected to have higher funds thanks to individual pension system. So actually wealth fund must have been designed mostly based on individual pension system. We can summarize that National Wealth Fund is quite similar with category of wealth funds, but indeed it is a kind of future savings platform.²⁰

When we look at the law text, we can see that the first article declares that the aim of Turkish National Fund is providing variety and depth for financial market tools, directing public assets into the financial system, getting external resources and finding capital for strategic and huge projects.

On the other hand, it can be seen in the justification of Turkish Wealth Fund law text, there is comprehensive and mighty target list. In the justification, there are randomly listed aims. We can classify those aims as followed; aims with

¹⁸ Fox, Ira M. et. al., p.19.

¹⁹ Kayıran, p. 70.

²⁰ Kayıran, p. 70-71.

regarding to growth-development, second type aims with related to stabilization purpose and final kind for foreign policy purpose.

Growth-development related aims are;²¹

*“-For next decade growth rate of Turkey, extra %1.5 added growth must be provided,
-For future investments hundreds of thousands of people must be employed,
-For technology intense fields like defense, aviation and software, local companies must be supported and opportunity must be given to make them global,
-Infrastructure projects like highways, Channel Istanbul, Third Bridge and Airport, nuclear power station must be financed without increased public debt,
-To provide supply security, foreign strategic sector items like natural gas and petroleum pipes must be directly financed without legal and bureaucratic limits.”*

Similarly, since there is an introduction statement in the law text which says “it is aimed that development will be sustained by financing real sector investments, which is indispensable for future of the economy, and providing capital for long term strategic projects, sector and companies”, we can conclude that one of the basic purposes is getting growth-development.

Purpose of stabilization is expressed as follows:

“whenever the financial crisis risk arises, foreign investors are withdrawing their assets which is causing sudden price drops and local investors are demanding foreign exchange speculatively, as a result market liquidity is decreasing and apprehension with regarding to financial markets is soaring. To solve mentioned problems; in case of financial pressure, the fund would act as stabilizer, the public funds would run consolidated, having strong National Wealth Fund would demonstrate safe and healthy economy, moreover it would bring reliability and would increase international credibility.”²²

²¹ “Türkiye Varlık Fonu Yönetimi Anonim Şirketinin Kurulması İle Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun”, <http://www.resmigazete.gov.tr/eskiler/2016/08/20160826-1.htm>(last visited: 10.10.2017); “Türkiye Varlık Fonu Kanun Tasarısı ve Gerekçesi”, TBMM, 1 Ağustos 2016 <http://www2.tbmm.gov.tr/d26/1/1-0750.pdf>, (last visited: 10.10.2017)

²² Türkiye Varlık Fonu Yönetimi Anonim Şirketinin Kurulması İle Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun”, <http://www.resmigazete.gov.tr/eskiler/2016/08/20160826-1.htm>(last visited: 10.10.2017); “Türkiye Varlık Fonu Kanun Tasarısı ve Gerekçesi”, TBMM, 1 Ağustos 2016 <http://www2.tbmm.gov.tr/d26/1/1-0750.pdf>, (last visited: 10.10.2017)

Matter of stabilization takes place in the justification in this way, on the other hand it isn't located in law text. It can be concluded that purpose of stabilization is just one of the side purposes.²³

In the justification of law text, it is specified that Turkish Wealth Fund can be used for foreign policy tool: *"this fund can bring benefit to overcome structural problems as well as, thanks to this important foreign policy tool, Turkey would get stronger influence over international community"*.

Activities

Operation areas of Turkish Wealth Fund P.L.C. are indicated in establishment law of The Fund.

According to its establishment law, the company will operate as completely private firm and will perform under private law articles. Apart from that the company would be able to have transaction over foreign and domestic stocks and bonds, precious commodities and financial market tools based on assets, fund participation shares, derivate tools, lease certificate, realty certificate, custom engineered foreign investment tools and other kind of instruments.

All kind of monetary market transactions, realties and rights based on realties and rights with regarding to intangible assets, all kind of project development, financial resource creation based on projects, providing foreign project credit and capital providing by other kind of methods, every kind of commercial and financial operations would be subject to international and local markets. The company would be able to have joint projects with other countries and foreign firms.

Meanwhile, the company would be able to create portfolio management, research, accounting, communication, registration, internal control, risk management and similar kind of units. The company would be able to get service outsourcing.

Institutions Transferred to the Turkish Asset Fund

Turkish Wealth Fund's portfolio is around 40 billion US dollars, it is composed of 14 companies in 5 strategic sectors, 46 valuable real estates and 2 games are included. The strategic sectors in the portfolio are Banking & Finance; Telecom, Media & Technology; Transportation, Logistics & Infrastructure, Energy & Mining; Agriculture and Food & Emerging Sectors. TWF is the leader of the sector where the majority of the companies in its portfolio are.²⁴ Transfers are based on 2017/9756 Cabinet Decree, Decree of the Higher Board of Privatization and Statutory Decree.

²³ Kayıran, p. 73.

²⁴ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, s.4; Last visited: 03.05.2018.

Table 1. No. 2017 / 9756 Cabinet Decree:²⁵

	Name of The Transferred Organization	Transferred
1	Ziraat Bank PLC	All of The Treasury Share
2	BOTAŞ PLC	All of The Treasury Share
3	TPAO PLC	All of The Treasury Share
4	PTT PLC	All of The Treasury Share
5	Borsa İstanbul PLC	All of The Treasury Share
6	Türksat PLC	All of The Treasury Share
7	Turkish Telecom PLC	%6,68 of The Treasury Share
8	Eti Maden General Directorate	As An Institution
9	Çaykur General Directorate	As An Institution

Those organizations are transferred to Turkish Wealth Fund by publishing on Official Gazette No. 29970 and date of 05.02.2017.

Table 2. Decree of the Higher Board of Privatization:²⁶

	Name of The Transferred Organization	Decree of the Higher Board of Privatization	Transferred
1	THY PLC	03.02.2017 2017/2	%49,2
2	Halk Bank PLC	03.02.2017 2017/1	%51,11
3	TCDD İzmir Pier	03.02.2017 2017/5	Right of Use
4	Turkey Maritime PLC	03.02.2017 2017/3	%49
5	Kayseri Sugar Plant	03.02.2017 2017/4	%10

Those organizations are transferred to Turkish Wealth Fund by decision of Higher Board of Privatization.

²⁵ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, s.4; Last visited: 03.05.2018.

²⁶ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, Last visited: 03.05.2018.

Table 3. Statutory Decree:²⁷

	Name of The Transferred Organization	3. Statutory Decree	Transferred
1	National Lottery Administration	02.01.2017 No. 680-82	For 49 Years
2	Turkey Jokey Club	02.01.2017 No. 680-77	For 49 Years

Those organizations are transferred to Turkish Wealth Fund by decision of government.

Also 4749 numbered Public Finance and Debt Management Regulation OG dated 12.24.2017 and additions made to the Law on the published 696 Decree Law No. "Turkey Wealth Funds to more than fifty percent of the capital with the decision to organizations be transferred to the public and / or Turkey Welfare Fund of Turkey Wealth Funds with the Corporation be offset against Turkey Wealth funds Management assignment of debt to companies and sub-fund to be established by the corporation, lending of foreign debt and repayment guarantees of the Council of Ministers may decide upon the proposal of the Minister of the implementation of the provisions set out in this Act in matters "provision was introduced.

LEGAL PERSONALITY AND CONTROLS OF TURKISH WEALTH FUND

Here, firstly we need to express that what is the meaning of legal personality in terms of an asset. Most important result of an legal personality is that the personality gives an independence to the asset in the legal world.

Legal Personality

According to law numbered 6741 Establishment of Turkish Wealth Fund P.L.C. and Alteration of Several Law Articles (Official Gazette 26.08.2016, Number: 29813), article 2/1, "*Turkish Wealth Fund P.L.C. was established which is ruled by Prime Ministry, the main operation areas are defined by law, The Fund and its Subfunds are performed with regarding to private sector rules and controlled by private law articles.*"

According to the plan the center would be in İstanbul and have five executive committee members, head of executive committee, members and general director would be chosen by Prime Minister. Law directs that the chosen ones have to

²⁷ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, Last visited: 03.05.2018.

have five years experience in at least one of the following fields; economy, law, public finance, private finance and banking.

The fund is an public limited company and has to obey all kind of rules with regarding to public limited companies. Main status of company was issued in Turkish Commercial Registry Gazette in the number of 9229 and on 28 december 2016 between pages of 778-781.

Turkish Wealth Fund is public limited company which is ruled according to private law terms. Turkish Trade Law number 331 dictates that public limited companies can be founded for any economic aim and field but as long as the field isn't crossed by law. On the other hand Turkish Trade Law number 330 says that the companies which have special laws are firstly ruled by their special laws, if there isn't applicable special law for them, in this case general private law terms are applicable.

According to abovementioned law terms, we can conclude two basic rules. Firstly, it is possible to establish companies which is ruled by special laws and secondly, if there isn't applicable special law terms in this case the company would be controlled by Turkish Trade Law terms.²⁸

According to The Law numbered 6741 article 3/1, whenever The Internal Regulation, which is prepared by The Fund, is registered to The Registry, the Fund is established. If there is need, subfunds can be established too. Turkish Wealth Fund Internal Regulation was issued in Trade Registry on the date of 30.01.2017, gazette number of 9252 and pages of 485-486.

While Turkish Wealth Fund doesn't have legal personality, according to The Law numbered 6741, article number 5, all the assets which are acquired by the Fund in any way (out of takeover or as a result of profit creating operations) would be registered to The Registry or concerned log on behalf of The Fund. Just for registration purposes The Fund has a legal personality.

According to the Turkish Trade Law article number 125/2, trade companies can borrow, in the context of Turkish Civil Code article 48, can take advantage of all kind of rights and take over debts on behalf of its personality (of course there are still special legal restrictions). As expressed, capacity to have rights are limited by law. These exceptional restrictions (which are taken place in The Law 6741 article 7) are sorted in this way: Assets of Turkish Wealth Fund and assets which are taken over by Fund are seperated. Assets of The Fund can't be collateralized and mortgaged but if there is an obligatory operational transaction of The Fund or The

²⁸ Vural Seven, "Türkiye Varlık Fonu Yönetimi Anonim Şirketi'nin Hukuki Durumu ve Denetimi", *Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi*, Cilt: 12, Sayı: 157, Eylül 2017, Page: 135-144, p. 2.

Subfunds, there can be an exception. So it can be seen that there is a restriction with regarding to right capacity.²⁹

Turkish Trade Law article number 395 dictates that executive board members can't have business with company and they can't borrow from it. Similarly Principal Agreement of The Fund says that apart from executive members, also their family members can't have business with The Fund (Principal Agreement article number 12/2). Internal Regulation has broader ban for the matter (Internal Regulation number 6.5, 6.6, 6.7)

When we look at the confiscation and pledge of assets of Turkey Wealth Fund, according to the 6741 Law No. Article 7, Turkey Wealth Fund assets of the transferred for management companies with assets of assets and rights of the company's assets appear to be separate. Thus, Wealth Fund assets can't be collateralized and pledged, it can't be saved for any other purpose, cautionary judgment can't be placed, hypothecate can't be executed for public debt and those assets can't be included in bankrupt's estate, the exception is Wealth Fund's commercial actions. The company's debts and liabilities to third parties can not be offset against each other for the same receivables from third parties.

There are some exemptions and privileges that the company has. These can be listed as Exemption of Income and Corporation Tax, VAT Exemption and Other Exceptions and Exemptions. The companies to be established by the company and the sub-funds to be established by The Wealth Fund are exempt from Income and Corporation Tax. This exemption also includes tax cut based on income and revenues in accordance with Income Tax Law No. 193 and Tax Law No.5520. Regarding Tax Exemption of Institutions; no regulation has been made in the Institutional Tax Law and the provision of exemption has not been placed in the law, the only exemption has been given in Law Number 6741. The point to be argued is not why there is no arrangement in Law of Institutional Tax but what there is need to consider which regulation, whether it must be taken Law of Institutional Tax or Law Number 6741 into account, it creates a discrepancy in terms of hierarchy of laws.³⁰

When we compare old law and new law, special law and general law, we come to conclusion that we must consider Law Number 6741, thus The Company and subfunds& companies to be established by The Company are exempt from tax, this exemption also includes exemption and revenue. However, it is also a

²⁹ Seven, pp. 2-3.

³⁰ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, p. 5, Last visited: 03.05.2018

requirement of the law to require tax exemptions and exceptions to be ruled by tax laws.³¹

The other exception is VAT-related exception. The following item (i) has been added to come after paragraph (4) of the Article 17 of the Value Added Tax Law and Article 9 of the Law No. 6741. "i) For assets, rights and other privileges carried by The Wealth Fund, other companies and subfunds to be established by The Fund, subparagraph (a) of Article 30 shall not apply". Normally, to get exempted there must be item in the VAT Law or Law of Institutional Tax, with thanks to Law No. 6741, this exemption is provided, since it meets the requirement.

Finally, other exceptions and exemptions must be mentioned. Excluding electricity and gas consumption tax and fire insurance tax: Taxes, fees, participation fees and attestation fees in accordance with the Municipal Revenue Law, Real Estate Tax, Deposits and cadastral capital charges related to purchased and sold immovables and obligations to deposit guarantees in all kinds of lawsuits and enforcement proceedings, establishment and registration transactions, stamps and stamps related to all the documents organized in relation to the transactions carried out within the scope of their activities including the registration and announcement transactions, all kinds of fees for all works and transactions, tax with regarding to amounts paid in cash or accounts of bank and insurance transactions regardless of name, any kind of loan usage transactions fund for supporting the use of resources, fees of asset rental companies established pursuant to this article which is liable for the sale of securities that they have issued, fees relating to securities in Istanbul Stock Exchange that apply to issuers are exempted for The Turkish Wealth Fund.

On the other hand, the Court of Accounts Law No. 6085, the Capital Markets Law No. 6362 and the secondary legislation enacted pursuant to this Law, the Decree No. 233 on the Law on State Economic Enterprises, the Regulation of Personnel Regulation No. 399 on State Economic Enterprises and the Removal of Certain Articles of Decree Law No. 233 Decree No. 657 on Civil Servants Law, No. 631 on Civil Servants and Other Public Officials on Financial and Social Rights, and Decree on the Amendment of Certain Laws and Decrees on the Decree Law, Decree No. 190 of the Law on the General Staff and Procedures, No. 527 Some Laws Regarding Civil Servants and Other Public Officials and the Decree Law on the Amendment of Decrees on the Law, Law No. 6245 on Mortgage Law, Law No. 3346 on State Economic Enterprises the Funds by Turkey in the Law on the Supervision of the Grand National Assembly, 4734 Public Procurement Act, 4735 Public Procurement Contracts Law, 2886 State Tender Law, No. 237 Vehicle

³¹ Türkiye Varlık Fonu Yönetimi Anonim Şirketi, http://www.istanbulymmo.org.tr/Data/Platform/2018_%C5%9EUBAT_09.pdf, p. 5-6; Last visited: 03.05.2018

Law, Public Housing Law No. 2946, 195 numbered Press-Declaration on the Agency Formation, Law No. 4054 on the Protection of Competition Law, the Law on the 4046 Privatization Practices provisions relating to their annexes and amendments, shall not be applied for The Wealth Fund and companies&subfunds established by The Fund.

Turkish Wealth Fund P.L.C. is a company with a 50 million Turkish Lira establishment capital. As expressed before, the company would work under supervision of Prime Ministry and the capital would be brought by Privatization Authority. There would be at least 5 executive board members and the president, members and general manager would be appointed by Prime Minister. Private law articles would be applied to The Fund and whenever The Fund prepares Internal Regulation, it would be taken to registry office, in this way the establishment would be complete. If necessary, subfunds can be created.

The Company, on behalf of The Fund, is able to have domestic and foreign stocks, shares of domestic issuers including privatization programs, all kind of domestic and international debt instruments, transactions with regarding to saving and participation account, treasury immovables, checking account certificate, repurchasing agreement and reverse repurchasing agreement, instruments based on gold, valuable minerals, fund participation shares, warrants, derivative market instruments, participation for local and international operations which can be provided by foreign governments.

Basically Turkish Wealth Fund has four different income resources: a) Establishments and assets within Privatization Authority and cash surplus which are given Wealth Fund from Privatization Authority b) All kind of asset and cash surplus of public institutions can be transferred to Wealth Fund by decision of Cabinet c) Capital and resources from domestic and international financial markets which are acquired by Fund thanks to related legal regulation d) All kind of resources which aren't obtained from financial or capital markets.

The Fund, subfunds and related companies would be exempted from income and corporate tax, moreover some of the their transactions would be independent from taxes like VAT.

Controls

The company has to follow regulation with regarding to private law articles, moreover it is independent from Chamber Account of Public Accounts. Apart from internal auditing units, the fund can be audited only by independent external auditing in the context of Capital Market Law.

According to Law numbered 6741 article 6;

“(1) The Company, companies would be created by The Company, Turkish Wealth Fund and subfunds of The Fund would be subject to

independent auditing. The Company would have various kind of institutional management regulations in the context of 6362.

(2) Independently audited annual financial and operational documents of The Company, companies would be created by The Company, Turkish Wealth Fund and subfunds of The Fund would submitted to the three experts who are appointed by Prime Minister.³²

Those experts must have specialization in capital markets, finance, economy, public finance, banking and development. Evaluation, in the context of independent auditing, of those three experts would passed through The Cabinet until very end of June annually.

(3) Last year's financial and operational documents of The Company, companies would be created by The Company, Turkish Wealth Fund and subfunds of The Fund would be passed through Turkish Grand Assembly Planning and Budget Office every october and The Office would take experts auditing reports into consideration."

Since The Company is the subject to the rules of public limited companies, the auditors have right to control all kind of company documents like corporate books, correspondences, asset documents, debt documents, valuable papers and inventory. Executive board has responsibility too whenever a document is asked by auditors (Turkish Trade Law n.401). Financial tables of the companies are audited by auditors according to Turkish Auditing Standards which is issued by Public Observance, Accounting and Auditing Standards Institution (Turkish Trade Law n. 397/1). As far as we can see from this clause, auditing must be held by considering both local and international auditing standards. Although financial documents are under obligation of being audited, if it isn't audited, then it is counted the documents haven't been created (Turkish Trade Law n. 397/2). It can be concluded that the audition is an obligation, moreover the obligation comes with heavy sanction.³³

THE RISKS OF THE TURKISH WEALTH FUND

Turkey Asset Fund Inc. is generally equipped with a wide range of authorities when assessed and it is outside the control of many laws both in terms of private law and public law. As a private and public institution, the company carries both political and institutional risk. A political crisis that may occur in the country may lead to a bankruptcy as well as corruption may have serious consequences for the company. Therefore, the company must be transparent, accountable and in a structure that is in compliance with fiscal discipline. It is stated that the legitimacy of the company is based on these issues. On the other side it is stated that it is not

³² The Fund was connected to Presidency and the head of the company's board of directors is the President of Turkey. See September 11, 2018 Presidential Decree No. 2018/162.

³³ Seven, p. 4.

clearly defined the purposes of the company.³⁴ This leads to questions on how to use a very large source transferred to the company.

It is believed that main purpose of the company is to generate revenue in the most general sense and it carries significant economic risks. One of the company's two main sources of income are financial products with real estate (such as stocks) and the second is borrowing from national and international markets. According to Kayıran, this situation will be extremely fragile.³⁵ It is inevitable that an emerging / emerging crisis in the country's economy will be reflected in the value of these financial instruments. The recent increase in the foreign exchange market shows this clearly.

Another risk is the granting of unlimited borrowing authority to the Company pursuant to Article 2 of Law No. 6741. This means that the basic principle of one-sided debt management is to engage in the industry. It is obvious that the Company, which has unlimited borrowing authority, will further increase the general debt burden of the country which has already had a lot of foreign trade deficit. This will corrupt both fiscal discipline and increase the fragility of the economy.

The last thing to be mentioned is that the Company, which has very important institutions in its portfolio, also houses a risk of corruption in the body.³⁶ According to Rose,³⁷ in the simplest way around the world, asset funds could be used to vote during voting times and be used for political patronage by Kayıran. The best example of this situation has been in Malaysia recently. The Malaysian Prime Minister, who controls Wealth Fund known as 1MDB, uses millions of dollars in election campaigns and transfers money to his / her relatives and personal account, and the Fund has lost about 13 billion dollars in 6 years between 2009 and 2015, moreover fund's high-ranking officials spent nearly \$ 4 billion on their own misappropriation and to shadow their actions, they circulated money in various countries.³⁸ A corruption, which we have already mentioned above and which can happen in the company as it is seen in the example of Malaysia, may also reveal an economic and political crisis in the country.

³⁴ Kayıran, pp. 81-82.

³⁵ Kayıran, p. 83.

³⁶ Check out the website to see the institutions in the company's portfolio; <http://turkiyevarikfonu.com.tr/TR/Portfoy/5> Last visited: 01.09.2018.

³⁷ P. Rose "Sovereign Funds and Domestic Political Legitimacy, Public Law and Legal Theory" The Ohio State University Moritz College of Law Working Paper Series No. 312., 2015, s. 11; Kayıran, s. 83.

³⁸ 1MDB Probe Shows Malaysian Leader Najib Spent Millions on Luxury Goods, <https://www.wsj.com/articles/malaysian-leader-spent-millions-on-luxury-goods-1459383835>, Last visited: 11.09.2018.

CONCLUSION

We have described the entity fund types above. Accordingly, Turkey Assets Fund doesn't depend on a commodity such as oil, or the type of fund is established balance of payments surplus. So there is no surplus income. In other words, Turkey has neither commodity nor funds to establish a presence like Wealth Fund. However, based on Law No. 6741, the Fund has been granted unlimited borrowing authority. This means that the basic principle of one-sided debt management does not comply with the finances and financial discipline, and it will increase the fragility of the economy by increasing the overall debt burden of the country. In addition, a political crisis that may arise in countries such as Turkey which resulted in the sinking Assets Fund Inc. Fund Assets Inc., a corruption may occur in a crisis can bring.

Accordingly, the following points must be mentioned again for Turkish Wealth Fund Asset:

First of all, fiscal discipline, accountability and transparency must be at the highest level in Turkish Asset Fund. When basic principles of debt management are taken into consideration requires working in coordination with other financial institutions.

The intent of the Turkish Asset Fund, which is understood to generate income in the most general sense, should be clearly stated. This should not be ambiguous. Investments should also be ensured by production, not borrowing consistently.

On the other hand, a management mechanism should be established remote as far as possible from political influences in order to avoid the corruption of the company, which carries the risk of corruption in the body.³⁹

Although the funds are being established to guarantee the welfare of future generations fund established in other countries, Turkey Assets Fund exhibits an opposite view. It should not be forgotten that the poor use of resources will lead to melt down the prosperity of future generations. As long as it is directed appropriately, it could be productive both for the Turkey and other stakeholder countries.

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³⁹ Mehmet Güçlü, "Ulusal Varlık Fonları: Türkiye Ekonomisi İçin Bir Değerlendirme" *Ege Stratejik Araştırmalar Dergisi* 2018, CİLT:9, SAYI:1, pp. 39-53, p. 50.

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