

The New Investments Law

National Investment Encouragement Act 2013

Pursuant to the Transitional Constitution of the Republic of the Sudan 2005, the National Council has promulgated and the President of the Republic has executed this Act the provisions of which are as follows:

Chapter One

Preliminary Provisions

Title of the Act and the Commencement date

1- This Act shall be called a "National Investment Encouragement Act 2013 and shall come into force from the date of its execution.

Repeal and Exception

2- (1) Investment Encouragement Act 1999 shall be repealed.

(2) Notwithstanding the provisions of Article (1) all bylaws, orders, decrees, licenses, concessions, guarantees and exemptions issued and proceedings taken under the rules of the Act stated in Article (1), shall remain valid till repealed or amended pursuant to the provisions of this Act.

Implementation

3-(1) The Rules of this Act shall be applied to the extent that shall achieve its targets, provided that, its

provisions shall not prejudice the concessions, exemptions, and guarantees prescribed for the projects

existing at the time of the validity of this Act.

(2) Notwithstanding the provisions of Article (1) all exemptions granted for imports of projects pursuant to the provisions of the previous investment laws shall be cancelled and the provisions of Article (21) shall apply, provided that the projects operating at the time of implementation of this Act which are organized under special agreements with the Republic of the Sudan, shall be exempted.

Prevalence of the Provisions of this Act

4- The provisions of this Act shall prevail in case of its contradiction with the provisions of any other law to the extent that shall removes such contradiction.

Interpretation

5- In this Act unless the context requires other wise :

National Investment Lands: Means the lands allotted for the national investments according to investment directives prepared in co-ordination with the competent ministries and states.

Rehabilitation: Means any construction, renovation, extension to be made in the existing project to secure increase of the productivity capacity.

General Secretary: Means General Secretary of the Authority appointed in pursuant of provisions of Article 15.

Authority: Means National Authority for investment constituted in pursuant of provisions of Article 11.

Investment Map: Means the document that sets the policies, general directives and sources

availed for the investment.

Chairman: Means Chairman of the Council.

Chairman of the Authority: Means Chairman of the Authority appointed pursuant to provisions of Article 8.

Invested Capital: Means:

(A) Local currency paid by the investors, which are utilized in the Project construction or operation, extension, renovation or re-construction according to provisions of law regulating such acts.

(B) Convertible foreign currency transmitted by one of the banks licensed by the Central Bank of Sudan, utilized in construction, operation or extension of such project or its renovation or rehabilitation as per laws regulating such acts.

(C) Local currency paid satisfying approval of the competent authorities to meet obligations that are due to the investor in foreign currency, if it is used for construction, operation, renovation, rehabilitation or extension as per laws regulating such acts.

(D) Capital in kind or any other property rights, like mortgages, stakes, shares, debentures, or any type of sharing, equipments, machines, apparatus, materials and other requirements, conveyances imported locally or from abroad for construction, operation or renovation or rehabilitation or extension as per law prescribing such acts.

(E) Intellectual property rights which includes copyright and neighbouring rights, trademarks, patents, industrial designs used in the project, provided that such rights satisfied protection conditions in accordance with the related law, and owned by the investor or licensed for its utilization.

(F) Profits realized by the project if been capitalized or invested in another project.

The Council: Means the Higher Council for the Investment, constituted pursuant to the provisions of Article 9.

Competent Court: Means the court established pursuant to Article 40.

The investor: Means a person being Sudanese or non - Sudanese who invests his assets in Sudan according to provisions of this Act.

Project: Means the national, state, or strategic investment project as the case may be.

National Investment Project: Means any project registered pursuant to the provisions of this Act in a name of a company, business name or partnership owned by a company, or business name its location extends in more than one state, or foreign investment project or shared with foreign parties, or operated by licenses from foreign companies, or established pursuant to special agreement with the Government of Republic of the Sudan, or project based on investing on national natural resources materials.

State Investment Projects: Means any economical investment activity that falls under any of the investment sectors organized by state investment law, which its legal form is a business name, or partnership, to which the conditions of national investment project are not applicable.

Strategic Investment: Means the project provided for in Article 15.

Preference Concessions: Means concessions granted with the object of encouraging investment in special geographical area or specific economic sector which has relative preference concession.

Competent Prosecutor Office: Means prosecution office established pursuant to the provisions

of Article 41.

The Competent Ministry: Means any National Ministry concerned with investment activity.

The Minister: Means the Minister of Finance and National Economy.

The Competent Minister: Means any National Minister concerned with investment activity.

State Minister: Means State Minister who is in charge of the investment affairs in the relevant state.

Chapter Two

Encouraging Investment

Aims of the Act

6- This Act aims to encourage investment in projects that achieve the national strategy, development plans and investment initiatives of Sudanese and non-Sudanese private sector, as well as cooperative, mixed and public sector, rehabilitation and expansion in investment projects.

Scope of National Investment

- (L) Laying internal regulations for organization of its business and meetings procedure.
- (M) Any jurisdiction or other powers assigned pursuant to the provisions of this Act or considered necessary to achieve its targets.
- (2) The Council may assign any of its powers to the Chairman.
- (3) The Council shall have secretariat for Co-ordination and follow up.

Channels of the national investment.

7- The law encourages investment on the national level to attain the aims of the development and the investment in the different channels in accordance to the regulations.

No differentiation between the projects.

- 8- (1) For the aims of this law there should be no differentiation between the investors because they are Sudanese or otherwise, or because of being a public sector, private sector, cooperative sector, or joint.
- (2) There will be no differentiation between the similar projects, in the similar areas about giving the merits and the guarantees.

Chapter Three

The Council

Creating and convening the Council.

- 9- (1) A council, named the higher council for investment, is created by a resolution of the President of the Republic, chaired by himself, and comprising members re-presenting the concerned parties.
- (2) The chairman of the investment authority is a member in the council and is its secretary.

Jurisdiction and powers of the council.

10. (1) The council is the higher authority responsible of the investment affairs. The council has the following jurisdiction and powers :-

- (a) To approve the general policies, the strategies, the plans, the programmes for attaining investment targets and to follow up the implementation.

- (b) Creating the attractive atmosphere for investment, erasing the obstacles, and enhancing the implementation.
- (c) Determining the channels and the investment priorities and issuing the general directives in accordance with the public policies and the investment map.
- (d) Convening technical committees and determining their regulations and powers.
- (e) Revising the laws that are relating directly or indirectly to the investment.
- (f) Considering the less-developed areas in accordance with the regulations.
- (g) Coordinating between the parties concerned with investment on the national level and on the States level.
- (h) The supervision, looking into the reports that are raised to it, and issuing directives.
- (i) Approving the estimated budget and the final accounts of the authority.
- (j) Approving the organizing Skelton and the terms of service of the investment authority employees.
- (k) Looking into the complaints of the investors.
- (l) Laying down internal regulations to organize its activities and meetings.
- (m) Any other specialities empowered to it by this law, necessary for attaining its targets.
- (n) The council can mandate its powers to the chairman.
- (o) The council convenes an executive office for coordination and follows up.

Chapter Four

The Authority

Formation of Authority and its main office

- 11- (1) An Authority named "National Authority for Investment" shall be established with financial and administrative independence having juristic personality with perpetual succession capacity having a general Seal having the right of litigation.
- (2) The main office of the Authority shall be in Khartoum State.

Jurisdiction and Powers of the Authority

- 12- The Authority shall have jurisdiction and executive powers required to achieve the objects of this Act, and without prejudice to the generality of the foregoing, it shall have the following jurisdiction and powers:
 - a. Preparation of proposal of investment priorities and its submission to the Council.
 - b. Preparation of investment plan according to government policy and sector-wise plans made by the competent ministries, and its submission to the Council.
 - c. Granting preferential privileges for the projects satisfying the conditions as set by the regulations.
 - d. Provision of basic data and demonstrations of policies to the investors.
 - e. Preparation of primary indicators for the investment projects and promotion thereof.
 - f. Recommendations to determine under-developed areas, and its submission to the Council for approval according to the provisions of regulations.
 - g. Licensing investment applications and process review all transactions of the projects, granting licenses and concessions, issuing decisions in co-ordination with concerned authorities according to the general policy.
 - h. Dispossession of national lands allotted to investor which has not been invested within the period prescribed by the regulations.
 - i. Organization of conferences, workshops, exhibitions, seminars and participation therein in co-ordination with the concerned authorities.
 - j. Requesting data and information related to investment.
 - k. Co-ordination with the authorities having relation with investment at national and state level.
 - l. Any other powers necessary to achieve the objects of this Act been assigned by the

Council.**Appointment of the Chairman Of the Authority**

13- The Authority shall have a Chairman to be appointed by the President of the Republic and the decree of the appointment shall determine his grade, allowances and benefits.

Jurisdiction and Powers of the Chairman of the Authority

14- The Chairman of the Authority shall be a member and secretary of the Council, and shall arrange preparatory materials for the business of the Council and shall be accountable to the Council for its management; and without prejudice to the generality of the foregoing, the Chairman of the Authority shall have the following Jurisdiction and powers:

- a. Submission to the Council programs, annual plan and periodical reports in respect of the business of the Authority.
- b. Presentation of Authority's budget proposal and final accounts to the council for approval.
- c. Taking any action it deems necessary for organization and management of the Authority.
- d. Representation of the State in regional and international conferences relating to investment.
- e. Execution of contracts, agreements and documents on behalf of the Authority as provided for by the laws and regulations.
- f. Granting licenses for national investment projects.
- g. Wholly or partial granting for privileges and facilities provided for in this Act.
- h. Delegation of any of its powers or jurisdiction as he deems to any of staff of the Authority or to a committee he constitutes as per restrictions and conditions he deems appropriate.
- i. To carry out all necessary duties for practicing jurisdiction and powers or any other duties assigned to by the Council.

Appointment of the General Secretary

15- The Authority shall have General Secretary to be appointed by the President of the Republic upon recommendation of the chairman of the Authority; the decree of appointment shall determine his grade, allowances and benefits.

Jurisdiction and Powers of the General Secretary

16- The general secretary shall be the chief executive, accountable to Chairman of the Authority for his performance; and without prejudice to the generality of the foregoing he shall have the following jurisdiction and powers:

- a. Disbursement of funds within the approved budget, laws and regulations governing the same.
- b. Taking necessary administrative measures related to the performance of the Authority as stipulated by laws and regulations.
- c. Submission of periodical reports of the works of the Authority to the Chairman.
- d. Setting performance plans and its criteria, indicators and basis of evaluation.
- e. Preparation and submission, of technical studies, researches and papers by department of the Authority, to the Chairman.
- f. Receiving recommendations issued by the investment units at the concerned ministries and submission to the Chairman of the Authority.
- g. Co-operation and co-ordination with the investment units at the concerned states and ministries to ensure implementation of the investment policies.
- h. To carry out all necessary acts for handling its jurisdiction and any other duties assigned to by the Chairman of the Authority.

Chapter Five

One-Stop gate System and Duties of the Competent Ministries

- 17- (1) One Stop gate system shall be established at the Authority, with the membership of the commissioners of the ministries having relations with the investment.
- (2) The commissioned persons representing the concerned ministries and the investment related departments shall be fully authorized the authorities they are representing in a manner not contradicting the jurisdiction granted pursuant to the Law, and they shall have the same jurisdiction and powers granted to the said authorities.
- (3) The commissioned persons shall report administratively to the Authority while technically to the authorities they represent, as determined by the regulations.
- (4) Notwithstanding the provisions of any other Law, all proceedings related to the provision of services to the investor shall be handled through one-stop gate system, including payment of fees against such services.
- (5) The authorities in charge of investment affairs at the states shall establish one-stop gate system as per pattern of one-stop gate system adopted by the Authority.

Duties of the Concerned Ministries in the

Scopes of Investment

- 18- The concerned ministries, each within its jurisdictions, shall carry out the following duties:
- (a) Determination of priorities and setting policies related to the investment.
- (b) Preparation of sectional maps of the investment.
- (c) Initial approval, for establishing the project based on technical, economic, environmental and social feasibility study, through the commissioner of one-stop gate system in the Authority as per the period of time fixed thereto.
- (d) The Authority shall provide the concerned ministry with a copy of the final license for the project.
- (e) Following up of execution of the projects and submission of periodical reports thereon to the Authority.

Chapter Six

Strategic National Investment Projects and Exemptions and Concessions

Strategic Investment Project

- 19- The project shall be considered as strategic project if any of the conditions are satisfied as provided for by the regulations.

Exemption and Concessions

- 20- (1) The Council of Ministers may, upon recommendation of the Minister, grant exemption of business profit tax to strategic investment project.
- (2) Projects capital expenditures shall be exempted from value added tax.

Exemption of Customs Duty

- 21- (1) The Authority may grant the project exemption of:
- a. Customs duty on capital expenditures which are not enrolled in custom tariff, in coordination with the concerned ministry, provided that exemption for state investment project shall be made upon recommendation of the state minister to the Chairman of the Authority.
- b. Customs duty of transport conveyances, excluding administrative vehicles "Saloons with capacity in excess of 1000 CC, double cab pickup and station wagon".
- (2) Production inputs of investment projects, not enrolled in customs duty tariff shall be subject to the same rate imposed on production inputs provided for in customs duty tariff as

determined by the regulations.

Survey and Demarcation of Lands allotted for National Projects

22- (1) Notwithstanding the provisions of any other Law, the Authority may allot the land required for establishing national or strategic investment project at encouraging rate in coordination with the states' authorities.

(2) The Authority, in coordination with states' authorities, may renew the term of the leasehold of the land where the project established thereon.

(3) The concerned authorities of states shall register lands for industrial and services projects; and shall carryout the detailed technical planning as well as preparation of the required maps and deposit them with the Authority for allotment.

(4) The concerned authorities of the states shall register agricultural lands and carryout technical survey and detailed planning and deposit the same with the Authority for allotment.

Handing over the Land Allotted for the Project

23- The land allotted for the project shall be handed over within maximum period of one month from the date of project registration, and shall be registered forthwith project completion.

Chapter Seven

Regulations and Procedures for Granting License

Establishment of the Project

24- The investor may establish any project after its registration and obtaining the required licenses according to the provision of this Act and regulations issued thereto.

Granting License

25- (1) The Authority upon receipt of license application for any project, shall within maximum period of one week, grant initial approval for the establishment of the project, if the project satisfied all prescribed conditions.

(2) The Authority shall grant the license within a period not exceeding one week of the date of receiving the business name.

(3) If the application for license is rejected, such rejection should be reasoned.

Appeal

26- The applicant for a license may appeal to the Council against not resolving or rejection of his application, provided that the council should resolve on the appeal within a period not exceeding one month from the date of receiving the application.

Conditions for Continuity of Enjoying the License

27- (1) The investor, with the consent of the Authority and recommendation of the concerned ministry, within validity period of the license to take any of the following actions:

a. To make any modification or change in the volume of the project, or its licensed object, or transfer of the project from its determined location.

b. Utilization or sale of any of the machines, equipment or specialized conveyance and its ancillaries against which concessions have been granted, to any object other than the licensed object, whenever all legally due obligations are met.

c. Change of utilization object of the land allotted for the project, its sale, mortgage or wholly or partial lease.

d. Mortgage of the project, equipment, machines or conveyances against which concessions have been granted.

(2) The land allotted for the project should not be sold or mortgaged unless it has been

invested wholly or partially in accordance with the regulations.

Obligations of the investor

28- The investor should:

- a. Perform the project by construction of the building and the required facilities as per drawings approved by the competent authorities within a maximum period of one year of the date of signing the contract, unless such period has been extended pursuant to a decision issued by the Authority, for any period it deems suitable.
- b. The full utilization of the land granted for the project according to the licensed object and approved drawings
- c. Submission of quarterly reports to the Authority and the concerned ministries throughout the validity period of the concessions in respect of the project execution operation progress.
- d. Keeping regular books and maintaining records wherein the projects assets and imported materials exempted from the customs duty are registered.
- e. To provide annually, the Authority and the concerned ministry throughout the validity period of the concession, with copies of the projects annual accounts certified by chartered auditor, and the Authority shall deposit a copy of these accounts with Chamber of Tax.
- f. To notify the Authority and the concerned ministry in case the project finally cease to work and operate, within a maximum period of three months from the date of cessation.

Chapter Eight

General Rules

The Investments Guarantees & Enhancing

29- (1).The project according to the provisions of this law enjoys the following guarantees and enhancing :

- (a) No nationalization, no seizure, no confiscation of the project assets or real estates, wholly or in part, unless for the public interest and against fair and immediate compensation.
- (b) No restriction, no confiscation no seizure or freezing or imposing custody unless by a judicial order or order by the concerned attorney.
- (c) The invested fund to be re-transferred if the project is not implemented or if it abolished with the consent of the investment authority on condition that all the liabilities are legally settled.
- (d) The re-export of sell or leave the mechanisms, the equipment, the goods, the transport means or the other things that were imported for the project in case of the project is not implemented, wholly or partially, on condition that all the legal liabilities are settled.
- (e) The transfer of the profits and the financing cost of the foreign capital or the loans in the currency that the Bank of the Sudan is dealing with, after settling all the liabilities
- (f) Importing the raw materials needed for the project.

2. For the aims of item (1) The investor capital in hard foreign currency be determined and the capital in kind elements be evaluated by by the investment authority in coordination with the concerned parties

3. The investor enjoys the following :-

- (a) Importing the permitted laborers in accordance to the rules and regulations.
- (b) The foreign investor obtains working and stay permits for him and for his family all through the project tenure in accordance to the rules and regulations.

4. The salaries and allowances of the non-Sudanese labourers are not subject to the social insurance law.

The Investment Map.

30. The investment authority prepares the national investment map in cooperation and coordination of the concerned Ministries and States in accordance with policies and directives for the investments and be raised to the Investments higher Council for approval.

No Duties are Imposed on the project

31. Despite the provocations of any other law the duties, the fees and the administrative fees on the national investment project or the national strategic or the State be determined by consultation and agreement with the States and the concerned parts within the framework of the Council.

The Project Protection.

32. Despite the provisions of any other law the concerned authorities must implement the exemptions, the privileges given by the provocations of this law.

Violating the Law Provocations.

33. (1) The investor is considered violating this law provisions is he violates the provisions of th items 24, 27, and 28.

(2) without violating the sanctions stated by any other law, and on the Minister's recommendation in case the investor commits any of the violations stated in Item (1), according to the volume of the committed contravention, and the damage that it has caused to the Sudanese national economy the investment authority can impose any of the following punishments :-

- (a) Warn him to remove the contravention during the assigned period.
- (b) Mitigating any of the merits given to him
- (c) Preventing him from enjoying the merits, the exemptions, and the guarantees stated by this law.
- (e) Cancelling the merits wholly or in part, as well as, forcing the investor to restore the benefit he gained before.
- (f) Cancelling the license and the merits and restoring the land.

3. In case of restoring the land located for the project the investor may be compensated for the value of the building and the other constructions in accordance to the regulations.

4. The investor whom a decision against him has been taken under Item (2) can complain against the decision to the council within one month of the date of the decision. If the decision becomes final, that does not ban the investor to resort to the concerned court.

Chapter Nine

The financial rules, the accounts, and the auditing.

Financial earnings.

34- The investment authority gets its financial earnings from :-

- (a) What is allocated to it by the Government
- (b) Any other earnings approved by the council

The Accounts, the books, and the auditing.

35. The authority keeps accurate accounts in accordance to the law of the financial and accounts procedure for the year 2007 and its regulations.

The Annual budget.

36. The authority has annual budget, to be prepared by the secretary general and to be raised to the council to approve it.

Auditing.

37- The national auditing chamber audits the budget of the accounts of the authority on the end of every financial year.

The statement of the final accounts and the report of the national auditing chamber.

38- The secretary general raises to the chairman of the authority every year, on a period not exceeding six months of the end of the year, a statement of the final accounts together with a report from the national auditing chamber so as the chairman of the authority can raise it to the council.

Chapter Ten**Final Rules****Settling investments disputes**

39. (1) Except the disputes that are settled by the terms of the agreements in item (2), if any legal dispute concerning investments arises it will be referred to the concerned court, unless the parties agree on referring it to arbitration or reconciliation.

(2) The rules of the unified agreement for the investment and the Arab capitals in the Arab countries for the year 1980 and the agreement for settling the investment disputes between the Arab countries for the year 1974 and the agreement for settling the investment disputes between the countries and the other countries citizens for the year 1965 and the general agreement for the economic technical and commercial cooperation between the countries members in the OIC for the year 1977 continue in force.

Establishing special courts.

40 The Chief Justice establishes special courts to look into the investments disputes.

Establishing special attorneys.

41. The Minister of Justice establishes special attorneys for the investment contraventions.

Power of issuing regulations.

42. (1) The council can issue the necessary regulations to implements the rules of this law.

(2) Without violating item (1) the said regulations can embody the following :

- (a) Determining the type and volume of the strategic projects which are given special preferable merits.
- (b) Laying controls to differentiate between the national investments and the State investments.
- (c) The Procedures of issuing the license, the merits, their type , their volume and their duration
- (e) Determining the service fee
- (f) The controls and bases of monitoring, following up of the licensed projects by the rules of this law.

Issued under my seal on this day 4th March 2013 ----- 22, Rabia Thani 1434 Higr

Marshal

Omer Hasan Ahmed El Bashir
President of the Republic