

Sudan

National Investment Encouragement Act 2013 (2013)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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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 I. Preliminary provisions

Article 1. Title of the act and the commencement date

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

Article 2. Repeal and exception

- 1) Investment Encouragement Act 1999 shall be repealed.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and exemptions issued and proceedings taken under the rules of the Act stated in Article (1), shall remain valid till repealed or amended pursuant to the provisions of this Act.

Article 3. Implementation

- 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.

Article 4. Prevalence of the provisions of this act

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

Article 5. Interpretation

In this Act unless the context requires otherwise:

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 13.

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 19.

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 II. Encouraging investment

Article 6. Aims of the act

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.

Article 7. Scopes of national investment

This Act encourages investment at national level with the purpose of achieving the targets of development and investment in different fields as prescribed by the regulations.

Article 8. Prohibition of discrimination between projects

1) For the purpose of this Act, no discrimination shall be made between the investors as being Sudanese, or non- Sudanese, or as being public, private sector, co-operative or joint sector.

2) No discrimination shall be made between similar projects in similar areas in respect of granting concessions and guarantees.

Chapter III. The Council

Article 9. Formation and constitution of the Council

1) A Council named “The Higher Council for the Investment “shall be constituted by a decree issued by the President of the Republic under his presidency and membership of persons representing the concerned authorities.

2) The Chairman of the Authority shall be member and secretary of the Council.

Article 10. Jurisdiction and powers of the council

1) The Council is the higher authority , responsible of investment affairs ; and without prejudice to the generality of foregoing , the Council shall have the following jurisdiction and powers :

a) Approval of general policies, strategies, plans, programs required to achieve targets of the investment and follow up of execution.

b) Pave way for attractive environment atmosphere, elimination of obstacles and facilitation of the work process.

c) Determination of scopes and properties of investment; and setting general directives in compliance with the general policies and investment plan.

d) Constitution of technical committees and by –laws shall set its jurisdictions and powers.

e) Review of laws related directly or indirectly to investment.

f) Approving under –developed areas as determined by the regulations.

g) Co-ordination among the authorities concerned with investment at national and state level.

h) Supervision of good performance, reviewing reports submitted by the Authority and issuance of appropriate directions thereto.

i) Approving estimated budget and final accounts prepared by the Authority.

j) Approving the organizational structures and terms of services of the Authority’s employees.

k) Considering complaints and appeals of the investors.

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.

Chapter IV. The Authority

Article 11. Formation of Authority and its main office

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.

Article 12. Jurisdiction and powers of the Authority

The Authority shall have jurisdiction and executive powers required to achieve the objects of this Act , and without prejudice to the generality of the forgoing, 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.

Article 13. Appointment of the Chairman of the Authority

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.

Article 14. Jurisdiction and powers of the Chairman of the Authority

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.

Article 15. Appointment of the General Secretary

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.

Article 16. Jurisdiction and powers of the General Secretary

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 s assigned to by the Chairman of the Authority.

Chapter V. One-stop gate system and duties of the competent Ministries

Article 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.

Article 18. Duties of the Concerned Ministries in the Scopes of Investment

The concerned ministries, each within its jurisdictions, shall carry out the following duties:

- a. Determination of priorities and setting polices related to the investment.
- b. Preparation of sectional maps of the investment.
- c. Initial approval, for establishing the project based on technical, economical, 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 VI. Strategic national investment projects and exemptions and concessions

Article 19. Strategic investment project

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

Article 20. Exemption and concessions

- 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.

Article 21. Exemption of customs duty

- 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.

Article 22. Survey and demarcation of lands allotted for national projects

- 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 at 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 at the states shall register agricultural lands and carryout technical survey and detailed planning and deposit the same with the Authority for allotment.

Article 23. Handing over the land allotted for the project

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 VII. Regulations and procedures for granting license

Article 24. Establishment of the project

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.

Article 25. Granting license

- 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.

Article 26. Appeal

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

Article 27. Conditions for continuity of enjoying the license

- 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.

Article 28. Obligations of the Investor

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 VIII. General provisions

Article 29. Guarantees and facilities of the investment

- 1) The project existing according to the provisions of this Act shall enjoy the following facilities:
 - a. The Assets and properties of the project shall not be subject to nationalization, seizure, confiscation or appropriation either wholly or partially, except for public interest against fair and immediate compensation.
 - b. The Funds of the project shall not be subject to seizure, confiscation, appropriation, freezing, attachment or receivership, except with judicial decree or order from the competent Prosecution.
 - c. Re- transmission of invested capital in case of non-execution, liquidation or disposition of the project by any manner of disposition with the approval of the Authority, provided that all legally due obligations are met.
 - d. Re- export , sale or assigning machines , equipments , goods, apparatus, transport conveyances or other ancillaries imported on the account of the project in case of non-execution of the project wholly or partially whenever all legally due obligations are met.
 - e. Transfer of profits and financing cost of foreign capital or loans in the currency by which Central Bank of Sudan deals or the loan on maturity date, after payment of all legally due obligations of the project.
 - f. Importing raw materials which the project and its products need.

- 2) For the purpose of item (1), the invested capital in foreign currency shall be determined and elements of capital in kind shall be evaluated by the Authority in co-ordination with the concerned authorities.
- 3) The investor shall enjoy the following:
 - a. Recruitment of licensed Labour according to the terms and conditions stipulated by the relevant laws and regulations thereto.
 - b. Foreign investor shall obtain work permits and residence license for himself and his family throughout the term of execution and operation of the project according to the relevant laws.
- 4) Wages and allowances of non- Sudanese labours of the project shall not be subject to social insurance.

Article 30. Investment map

The Authority shall prepare the national investment map in co- operation and co- ordination with competent ministries and states according to the polices and general directives of the investment and shall be submitted to the Council for approval.

Article 31. No fees on the project

Notwithstanding the provisions of any other law, fees, AWAED levies and other administrative fees on national or strategic project, national or state projects shall be levied in consultation and agreement with states and concerned authorities within the ambit of the Council.

Article 32. Protection of the project

Notwithstanding the provisions of any other law, the concerned authority shall implement exemptions, concessions and guarantees granted pursuant to the provisions of this Act.

Article 33. Breach of the provisions of the Act

- 1) The investor shall be considered violating the provisions of this Act if he breaches the provisions of Article 24 or 27 or 28.
- 2) Without prejudice to any other penalty provided for in any other law, the Authority may, upon the recommendation of the competent minister, in case the investor commits any of the violations provided for in item (1) and according to the gravity of the violations and circumstances of commission and extent of damage affecting the national economy, impose any of the following penalties:
 - a. Warning to eliminate the causes of breach, if required, within a period determined thereto.
 - b. Reduction of any concessions granted to the project.
 - c. Deprivation of concessions, exemption or guarantees provided for in this Act.

d. Whole or partial cancellation of the concessions and accordingly to oblige the investor to return back value of the material benefits gained from acquiring any previous privileges if acquiring such gain resulted from the occurrence of cause leading to issuance of the cancellation decision.

e. Cancellation of the license and concessions granted hereby, and accordingly the return back the leased land granted pursuant to provisions of this Act to the Government.

3) In case of dispossession of the land allotted for the project the investor may be compensated for buildings and constructions stand erected thereon -if any - as per dispossession regulations.

4) The investor against whom the decision was passed pursuant to the provisions of item (2), may appeal to the Council with a maximum period of one month of the date of issuing the decision, and the decision in this respect shall be final and provided that this decision shall not preclude the investor to resort to the competent court.

Chapter IX. Financial rules, accounts and auditing

Article 34. Financial resources

Financial resources of the Authority shall consist of:

- a. Resources allocated by the Government.
- b. Any other financial resources approved by the Council.

Article 35. Keeping accounts, records and auditing

The Authority shall maintain accurate accounts satisfying, for its business according to sound accounting principles provided for in Financial and Accounting Procedures Act 2010 and the regulations issued thereto.

Article 36. Annual budget

The Authority shall have annual budget, the estimation of which shall be prepared by the General Secretary and shall be submitted to the Council for approval.

Article 37. Auditing

The National Audit Bureau shall audit the accounts of the Authority after the end of each fiscal year .

Article 38. Statement of final accounts and report of ational Audit Bureau

The General Secretary shall submit annually to the Chairman of the Authority, within a period not exceeding six months of the end of the fiscal year, statement of final accounts accompanied by a t report from the National Audit Bureau, so that the Chairman of the Authority shall submit it to the Council.

Chapter X. Final provisions

Article 39. Resolving of investment disputes

1) With exceptions to the disputes governed by the terms of the agreements stipulated for in item (2), if any legal dispute ensues in respect of the investment, shall be initially presented to the competent court unless the parties agree to refer it to arbitration or reconciliation.

2) The terms of the Unified Agreement for the Investment of Arabic Capital in Arab States 1980, Agreement for Settlements of Investment Disputes among Arab States 1974, Agreement for Settlement of Investment Disputes Among States and Nationals of other Countries 1965, General Agreement for Economical , Technical and Commercial Co-operation among Members Sates of Islamic Conference 1977 or any other agreement in this respect where Sudan is a party thereof, shall be applicable on any legal dispute arises directly from any of the said agreements .

Article 40. Establishment of specialized court

The Chief Justices shall constitute specialized courts to consider suits related to the investment.

Article 41. Establishment of specialized prosecution offices

The Minister of Justice shall constitute specialized Prosecution offices for violations related to the investment.

Article 42. Powers to issue regulations

- 1) The Council shall issue necessary regulations to execute the rules of this Act.
- 2) Without prejudice to the generality of the foregoing in item (1) the regulations may include the following:
 - a. Determination the type and the volume of strategic projects or the ones granted preferential privileges.
 - b. Setting conditions to prevent intervention between national and state investments.
 - c. Procedures for granting license and concessions and to determine it types ,volume and term.
 - d. Fixing fees of service.
 - e. Conditions and basis related to control and follow up of the projects licensed pursuant to the provision of this Act.

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