

The National Investment Encouragement Act 2013

In accordance with Article 109(1) of the Sudan Interim Constitution 2005, the President of the Republic issued the following provisional decree:-

CHAPTER I PRELIMINARY PROVISIONS

Name and Commencement of Provisional Decree

- 1- This provisional decree shall be cited as “The National Investment Encouragement Act, 2013” and shall enter into force as from time of signature.

Repeal and Saving

- 2- (1) The Investment Encouragement Act, 1999, shall be repealed.
(2) Without prejudice to the provisions of s. (1), all regulations, orders, decisions, licenses, privileges, guarantees and exemptions issued in accordance with the mentioned Act in s. (1) shall remain in force, until repealed, or amended in accordance with this Act.

Application

- 3- The provisions of this act shall apply as to such extent as may achieve the objectives thereof, provided that the provisions of the same shall not prejudice such privileges, exemptions and guarantees prescribed to the existing projects at the time of commencement of this Act.

Prevalence of provisions of this Act

- 4- The provisions of this Act shall prevail in case of inconsistency with the provisions of any other law to the extent of removing such inconsistency.

Interpretation

- 5- In this act, unless the context otherwise requires:-

National Investment Land : means lands allocated for national investment, according to investment directives made in co-ordination with the competent ministries and States.

Rehabilitation : means any establishment, modernization or extension of an existing project, such as may guarantee the increase of the productive energy.

Secretary General : means the Secretary General appointed in accordance to s. 15.

Organ : means the national investment organ instituted in accordance to provisions of s. 11.

Investment Map : means document specifying policies of national investment, general directives and available investment resources.

Chairperson : means named chairperson of the Borad.

Organ chairperson : means chairperson of the organ appointed in accordance to s. 13.

Invested money : means;

a) local currency, paid by the investor and used in the establishment , operation, execution modernization or rehabilitation of the project according to the provisions of law organizing the same.

b) convertible foreign currency converted through one of the licensed banks through Central Bank of Sudan, which is used in establishment of the project, operation, extension, modernization or rehabilitation, according to the provisions of law organizing the same.

c) local currency, paid against satisfaction of Investor due obligations in foreign currency upon approval of competent bodies if used for establishment of the project, operation, modernization, rehabilitation or extension according to the provisions of laws organizing the same.

d) The corporeal capital, or any other corporeal rights such as mortgages, debts, securities, and all similar rights, dividends, shares, debentures pertaining to companies, and any form of participation therein, machineries, equipment, material and other imported and local requisites, and the means of transportation for establishing the project, operation, modernization, rehabilitation or extension according to the provisions of the law organizing the same.

e) rights of intellectual property, including copy rights, neighboring rights, trade marks, patents and industrial designs which is used in the project, provided that such rights satisfies conditions of protection in accordance with the provisions of the law pertaining to each and owned by the investor or licensed to use.

f) such profits as may be achieved by the project, if been capitalized or invested in any other project.

The Board : means the Higher Board for Investment established in accordance to Section 9.

The competent Court : means Court established pursuant to s. 40.

The Investor : means any Sudanese or non Sudanese who invests his assets in Sudan in accordance to the provisions of this Act.

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

National Investment Project : means any registered project in accordance with the provisions of this Act in the name of company, business name or partnership owned to a company, or a business name of which site is extended to more than a state, or a foreign investment project or shared venture with

foreign parties, or established within a special agreement with the Government of Republic of Sudan, or a project which is founded upon investment in national natural resources.

State Investment Project : means any economic investment activities within any of the investment fields organized in accordance with a state investment law and its legal form is a business name or partnership and to which the conditions of national investment project do not apply.

Strategic Investment Project : means the project provided for in Section 19.

Preferential Concessions : means concessions granted for the purpose of encouragement of investment in a specified geographical place, or a certain economical sector of a relative concession.

Competent Attorney General Bureau : means Attorney General Bureau instituted in accordance with the provisions of Section 41.

Competent Ministry : means any national ministry, specified for investment activity.

Competent Minister : any national minister specified for investment activity.

State Minister : means state minister who assumes investment affairs in the State.

CHAPTER II ENCOURAGEMENT OF INVESTMENT

Objectives of the Act

- 6- This Act targets the encouragement of investment in projects achieving objectives of the national strategy and development plans, investment initiations of Sudanese private sector, non Sudanese cooperative sector, mixed, public, rehabilitation and extension of investment projects.

Fields of national investment

- 7- This Act encourages investment on the development and investment objectives, in the different fields as regulations may specify.

Prohibition of Discrimination
between projects

- 8- (1) for purpose of this Act, no discrimination shall be made between investors for reasons of being Sudanese or non Sudanese, private or public, cooperative or joint sector.
- (2) No discrimination shall be made between such similar projects, as may be specified by the regulations, with respect to grant privileges or guarantees.

CHAPTER III
THE BOARD

Establishment and Formation
of the Board

- 9- (1) There shall be established a board named as “Higher Investment Board” formed by a decision of the President of the Republic under his presidency and membership of a number of persons representing bodies having connection.
- (2) The Chairman of the organ shall be a member and raportuer of the Board.

Functions and powers
of the Board

- 10- The Board is the supreme authority, responsible for the investment activities, and without prejudice to the generality of the above mentioned, the Board shall have the following functions and powers, to:-
- a) Pass the general policies, strategies, plans, programmes necessary for achieving investment objects and follow up of the execution thereof.

- b) Prepare the suitable climate which attracts investment, removing obstacles, and facilitating performance of duties.
 - c) Specify field and priorities of investment, set out general directives according to the public policy and investment map.
 - d) Form technical committees, of which powers and functions are to be fixed by regulations.
 - e) Revise relative investment laws, directly or indirectly.
 - f) Approve the least developed areas subject to such as may be specified by regulations.
 - g) Make co-ordination between bodies having connection to investment, on national and state levels.
 - h) Supervise the good performance and consider reports submitted from the organ, and issue the suitable directives thereof.
 - i) Pass the estimated budget and final accounts prepared by the organ.
 - j) Approve the organizational structure, and terms of service of organ's employees.
 - k) Consider grievances and appeals of investors.
 - l) Set out internal regulation to organize its work and hold meetings thereof.
 - m) Any other functions or powers, granted in accordance to this Act, or deemed necessary to achieve its objectives.
- 2) the Board may delegate any of his powers to the chairperson.
 - 3) The Board shall have executive office for co-ordination and follow up.

CHAPTER IV THE ORGAN

Establishment and Seat

- 11- (1) There shall be established an organ known as “The National Organ for Investment” shall have financial and administrative independence, corporate body, perpetual succession, general seal and right of adjudication in its own name.
- (2) The headquarters of the organ shall be at Khartoum State.

Functions and powers of the Organ

- 12- The organ shall have the necessary functions and executive powers for achievement of the objectives of this Act, and without prejudice to the generality of the above mentioned, shall have the following functions and powers, to:-
- a) prepare the proposal of investment priorities and submit to the Borad.
 - b) Prepare investment map, according to the state policy and sectorial map prepared by the competent ministries and submit to the Board.
 - c) Grant preferential concessions for projects satisfying such conditions as specified by regulations.
 - d) Provide basic information and demonstrate policies to investors.
 - e) Prepare preliminary indicators for investment projects and propagates the same.
 - f) Make recommendations to specify the least developed areas and submit to the Board for approval in accordance with the provisions of regulations.
 - g) License investment applications, proceed on transactions pertaining to projects, and examination thereof, grant of license and concessions, and issuance of decisions in

coordination with competent bodies in accordance with general policies.

- h) Expropriation of national lands allocated for investment which is not invested within the prescribed period in the regulation.
- i) Organize conferences, workshops, exhibitions, Seminars, participate therein with coordination with bodies having connection.
- j) Request data and information relating to investment.
- k) Coordinate with bodies having connection to investment in the national and state levels.
- l) Any other powers necessary for achieving the objects of this Act assigned by the Board.

Appointment of chairperson of the Organ

- 13- The Organ shall have a chairperson appointed by the President of the Republic. The appointment decree shall prescribe his grade, allotments and privileges.

Functions and powers of Chairperson

- 14- The Chairperson of the Organ shall be a member and rapporteur of the Board, and shall make the preparatory materials for the Board works and shall be responsible for management of the Organ, and without prejudice to the generality of the above mentioned, the chairperson shall have the following functions and powers, to:-
- a) submit programmes, annual plans, periodical reports about the Organ works to the Board.
 - b) present the Organ proposed budget and final accounts of the Board for approval.
 - c) take any procedure deemed to be necessary for managing and organizing the Organ.

- d) represent the country in international and regional forums pertaining to investment.
- e) sign contracts and agreements and documents on behalf of the Organ in accordance with such as regulations may specify.
- f) grant licenses for national investment projects.
- g) total or partial grant of privileges and facilities provided for in this Act.
- h) delegate any of his powers and functions to other employees or to a formed committee with the suitable conditions and safeguards.
- i) undertake all necessary duties for execution of his functions and powers and any other duties assigned to by the Board.

Appointment of Secretary General

15. The Organ shall have a Secretary General appointed by the President of the Republic upon recommendation from the Organ Chairperson, the appointment decree shall prescribe his grade, allotments and privileges.

Functions and powers of Secretary General

16. The Secretary General shall be the first executive responsible to the Chairperson for performance, and without prejudice to the generality of the above mentioned, shall have the following functions and powers, to:-
- a) spend money, within the limits of the approved budgets, laws and regulations organizing thereof.
 - b) take the necessary administrative procedure, pertaining to the performance of the Organ in accordance with such as may be specified by laws and regulations.
 - c) submit periodical reports about the Organ works to the Chairperson.

- d) set out performance plans, criteria, indicators and basis of evaluations.
- e) prepare technical studies, researches papers through the Organ departments and submit to the Chairman.
- f) receive recommendations issued to the investment units in competent ministries and submit to the Chairperson.
- g) cooperate and coordinate with investment units in States and competent ministries to guarantee the execution of investment policies.
- h) undertake all necessary works for performing his functions or any other functions as agreed by the Chairperson.

Chapter V One-stop gate System and functions of competent ministries

One-stop gate System

17. (1) There shall be established a one-stop gate system with membership of delegates from competent ministries and bodies having connection with investment.
- (2) The delegates representing competent ministries and bodies having connection therewith shall be considered fully delegated from represented bodies and shall have same functions and powers granted thereto.
- (3) The delegates shall be administratively affiliated to the Organ and technically to the bodies they represent, in accordance to such as may be specified by regulations.
- (4) Notwithstanding the provisions of any other law, all procedure pertaining to presenting services to the investor shall end through the one-stop gate system including the payment of fees against such services.
- (5) Bodies undertaking investment affairs in the States shall establish the one-stop gate system as pattern of one-stop gate system of the Organ.

Duties of competent ministries
in the fields of investment

18. competent ministries staff each in its field undertake the following duties, to:-
- a) specify the priorities and set out policies pertaining to investment.
 - b) prepare sectorial maps pertaining to investment.
 - c) The initial consent for establishment of the project upon the technical feasibility, economical, environmental, social study through the delegate of the one-stop gate system in accordance to the prescribed time.
 - d) The Organ shall provide the competent ministry with a copy of the final project licence.
 - e) follow up the execution of projects and submit periodical reports thereof to the Organ.

Chapter VI

Strategic Investment Projects, Exemptions and Concession

The Strategic Investment
Project

19. The project is deemed to be strategic if it satisfies any of the conditions as may be specified by regulations.

Exemption from Value Added Tax

20. The project imports of capital preparations shall be exempted from Value Added Tax according to the approved list of the National Investment Organ.

Exemption from custom fees

21. (1) The Organ may grant the project exemptions from:-
- a) custom fees on capital preparations, which is not provided for in custom tariff, in coordination with competent ministry,

provided that the exemption for the State investment project shall be upon recommendation of the State Minister to the Chairperson of the Organ.

b) customs for means of transportation, excluding administrative cars (Saloons of more than 1000 C.C capacity – double cabinets pickup and stations wagons.

(2) production inputs for investment project, which is not provided for in the custom tariff shall be subject to the same rate category impose on the production inputs in custom tariff to such as may be specified by regulations.

Survey and Demarcation
of land allotted
for national projects

22. (1) Notwithstanding the provisions of any other law, the Organ may allocate land for establishment of the national strategic investment project at encouragement rate in co-operation with the state authorities.
- (2) The Organ may renew the leasehold of the project land in coordination with the states authorities.
- (3) the competent bodies in states shall undertake the registration of industrial and service land, and make the technical and detailed planning, making of necessary maps and deposit the same with the Organ for allotment.
- (4) the competent bodies in states having connection shall undertake the registration of agricultural land, technical survey, detailed planning and deposit the same to the Organ for allotment.
23. The land allocated for the project shall be received within a minimum period of one month from the time of registration thereof, and shall be registered as soon as the project is completed.

Chapter VII
Safeguards and procedure
of grant of license

Establishment of the project

24. The Investor may establish any project after registration thereof, and obtaining of necessary license in accordance with the provisions of this Act and regulations thereof.

Grant of License

25. (1) the Organ shall, at the receipt of the license application, for any project, grant the initial license within a maximum period of one week if the project satisfies the requirements.
(2) The Organ shall grant the license within a period not exceeding one week from the time of receiving of the business name.
(3) If the license application is refused, the decision thereof shall be justified.

Appeal

26. The applicant for the license, may appeal to the Board for the non deciding in his application or refusal thereof, the Board shall decide on the appeal within a period not exceeding one month from the date of receiving the application.

Conditions for continuity
of enjoying License

27. (1) The Investor may, with approval of the Organ, and recommendation of the competent Ministry, within the period of validity, undertake one of the following procedures:-
a) Make any amendment or change in the project size or purpose for which license is granted, or transfer the project from its prescribed place;

b) Utilization or sale of any specialized or auxiliary machineries or equipment or means of conveyance to which certain privileges are granted, for any other purpose, alter the purpose to which license is granted, whenever all due legal obligations are fulfilled.

c) Change the purpose of allocated land usage.

d) Mortgage the project, equipment, machineries, or transportation means of which privileges are granted.

(2) The allocated land shall not be sold, or mortgaged, unless fully or partially invested in accordance to such as regulations may specify.

Duties of the Investor

28. the Investor shall:-

a) execute the project, by establishing buildings, necessary constructions in accordance to the approved maps from the competent bodies, within a period not exceeding one year from the time of signature of contract, unless such period extended by an organ decision for any suitable period.

b) full exploitation of land granted to the project according to the licensed purpose and approved maps.

c) submit periodical reports every three months, within the validity of privileges, to the Organ and competent Ministry, about the process of execution operation.

d) hold regular books, keep records on which assets exempted from custom fees and imported exempted material are registered.

e) present to the Organ and competent Ministry, a copy of the annual project accounts within the period of privileges validity, which is approved from a legal auditor, and the Organ shall deposit a copy of the same with the Taxation Chamber.

f) notify the Organ and competent Ministry in case of final cease of project work and operation within a period of three months from the date of such cease.

Chapter VIII General Provisions

Guarantees and Investment Facilities

29. (1) The existing project shall enjoy the following guarantees and facilities in accordance with this Act:-
- a) Non-nationalization, seizure, confiscation or expropriation of the project assets and estates in whole or in part, save as for public policy and against a fair and immediate compensation.
 - b) non seizure on project funds, confiscation, expropriation, freezing, reservation or imposing custody thereof; save as by a judicial order, or order from the competent Attorney General Bureau.
 - c) Re-conversion of invested money in case of non execution of the project, liquidation, or disposal of it in any manner with the approval of Organ on condition that all legal obligations are fulfilled.
 - d) re-export, sale, waiver of machineries, equipments, goods, apparatuses, means of conveyances and other requirements imported for the project, in case of non execution of project in whole or in part whenever all due legal obligations are fulfilled.
 - e) transfer of profits and the cost of finance of foreign capital or loans in the currency dealt with at the Central Bank of Sudan or loan at the due date, after the payment of legal due obligations.
 - f) import required raw materials for the projects and products thereof.
- (2) for the purpose of sub-section (1), the invested capital is to be determined in foreign currency, and the corporeal capital elements shall be assessed by the Organ, in coordination with the competent bodies.
- (3) The Investor shall enjoy the following:-

a) import the licensed labours in accordance with the conditions and safeguards such as may be determined by laws and organizations organizing thereof.

b) obtain of the foreign Investor work licenses, residence for him and his family, throughout the term of execution and operation of the project in accordance with laws and regulations organizing the same.

(4) The wages and allowances of non Sudanese workers shall not be subject to Social Insurance.

Investment Map

30. The Organ shall prepare the National Investment Map in cooperation and coordination within competent bodies and States, in accordance to policies and general investment directives and shall submit the same to the Board for approval.

Ban of fees on project

31. Notwithstanding the provisions of any other law, fees, charges, duties, administrative fees, on the national investment project, or national, or state strategic project shall only be levied in consultation and agreement with States and bodies having connection within the frame of the Board.

Protection of projects

32. Notwithstanding the provisions of any other law, the competent bodies shall execute exemptions, concessions and guarantees granted in accordance to the provisions of this Act.

Contraventions of provisions of this Act

33. (1) The Investor is deemed to commit a contravention to this Act, if he violates the provisions of Sections 24, 27 or 28.

(2) Without prejudice to any other punishment provided for in any other law, the Organ may, upon recommendation of the competent Minister in case of Investor committing any of the contraventions provided for in sub-section (1), according to size of the contravention and circumstances of its commission and extent of detriments occurring to national economy, impose any of the following sanctions:-

a) warning to remove the causes of the contravention, if any, within a specified period.

b) Reduction of any of the concessions granted to the project.

c) Deprivation of concessions, exemptions, and guarantees provided for in this Act.

d) whole or partial cancellation of concession and accordingly oblige the Investor to retribute the value of material benefits which are obtained as a result of any past concessions, if such benefits are the product of the cause promulgating the cancellation decision.

e) cancellation of license and granted privileges thereof and restitution of land lease granted in accordance to the provisions of this Act.

(3) in case of expropriation of allocated land the Investor may be identified for the value of buildings and establishments, if any, in accordance to the provisions of regulations.

(4) The Investor against whom a decision is passed in accordance to sub-section (2), may appeal to the Board, within a period of one month, from the date of the decision thereof, the decision on the appeal shall be final, provided that such decision shall not preclude the Investor to resort to competent Court.

Chapter IX
Financial Provisions, Account and Audit

Financial Provisions

34. The financial provisions of the Organ shall consist of:-
- a) Resources allocated by the Government;
 - b) any other resources approved by the Board.

Keeping Account Books
and Auditing

35. the Organ shall keep accurate accounts satisfying its work, in accordance with sound accounting basis, provided for by the Financial and Accounting Procedure Act 2007, and regulations thereof.

Annual Budget

36. The Organ shall have annual budget assessed by the Secretary General and shall be submitted to the Board for approval.

Auditing

37. The National Audit Chambers shall audit the Organ accounts at the end of each financial year.

Statement of Final Account
and report of National Audit Chambers

38. The Secretary General to the Chairman Organ shall annually submit, and within six months of the end of the financial year, statement of final accounts, accompanied by a report from the national audit Chambers, of which the Chairperson of the Organ shall submit to the Board.

Chapter X
Settlement of Investment
Disputes

39. (1) Save as investments governed by Agreements provided for in sub-section (2), if any legal investment dispute has arisen, it shall be initially presented to the competent Court, unless the parties had agreed to refer to arbitration or conciliation.
- (2) The provisions of Unified Agreement for Investment of Arabic Capital in Arab States 1980, the Agreement on Settlement of Investment Disputes 1974, the Agreement of Settlement of Disputes Between States and Nationals of other States 1965, the General Agreement for Economic, Technical, and Commercial Cooperation among Members of Islamic Conference 1977, and any other Agreement in this respect of which Sudan is a party, shall be applicable on any legal disputes which arises directly from the said Agreement.

Establishment of Specialized
Courts

40. The Chief Justice shall establish special Courts to consider investment suits.

Establishment of Specialized
Attorney General Bureaus

41. The Minister of Justice shall establish specialized Attorney General Bureaus for investment contraventions.

Power of making regulations

42. (1)The Board may make necessary regulations for the execution of the provisions of this Act.
- (2) Without prejudice to the generality of the above mentioned in sub-section (1), such regulations may imply:-

- a) determination of kind and size of strategic projects, such as to be granted preferential privileges.
- b) set out safeguards to prevent interventions between national and State investments.
- c) procedure for granting license and privileges and determination of kind, size, or extend thereof.
- d) determination of service fees.
- e) safeguards, basis of supervision, following for licensed projects in accordance to the provisions of this Act.