

Provisional Order

The National Investment Encouragement Act 2013

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

CHAPTER I **PRELIMINARY PROVISIONS**

Title and Commencement

- 1- This provisional order may be cited as “The National Investment Encouragement Act, 2013” and shall come into force from the date of signature.

Repeal and Saving

- 2- (1) The Investment Encouragement Act, 1999, shall be repealed.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issued in accordance with the provisions of the Act mentioned in sub-section (1), shall remain in force, until repealed, or amended in accordance with the provisions of this Act.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

Secretary General: means: the Secretary General appointed in accordance with the provisions of section 15.

Authority: means the National Investment Authority established in accordance with the provisions of section 11.

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

Chairperson: means chairperson of the Council.

Authority chairperson: means, Chairperson of the Authority appointed in accordance with the provision of section 13.

Invested money: means:-

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

b) Convertible foreign currency converted through one of the banks licensed by the Central Bank of Sudan, which is used for the establishment of the project, operation, extension,

modernization or rehabilitation , according to provisions of laws regulating the same.

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

d) The corporeal capital, or any other corporeal rights such as mortgages, debts, guarantees, and all similar rights, dividends, shares, debentures pertaining to companies, and any form of participation therein, machineries, equipment, materials and other means of transport for establishing, operating, modernizing, rehabilitating or extending the project according to the provisions of the laws regulating the same.

e) rights of intellectual property, including copy rights, neighboring, rights, trade marks, patents and industrial designs used in the project, provided that such rights satisfy the conditions of protection provided for in the laws pertaining to each, and owned or licensed for use by the investor.

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

The Council: means the Higher Council for Investment established in accordance with the provisions of Section 9.

The competent Court: means, the Court established pursuant to the provisions of Section 40.

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

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

National Investment Project: means any project registered in accordance with the provisions of this Act in the name of a company, business name or partnership owned to a company,

or by a business name the site of which is extended to more than one state, or a foreign investment project or joint venture shared 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 activity within any of the investment field, regulated in accordance with a State Investment law, the legal form of which is a business name or partnership to which the conditions of national investment project do not apply.

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

Preferential Privileges: mean privileges granted for the purpose of encouraging investment in a specified geographical place, or a certain economical sector of a relative privilege .

Competent Bureau: means the bureau established in accordance with the provisions of Section 41.

Competent Ministry: means any National Ministry concerned with investment activity.

Competent Minister: any National Ministry concerned with investment activity.

State Minister: means any 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 the objectives of the national strategy and development plans, investment initiatives of Sudanese and non-Sudanese private sector, cooperative, mixed and public sector, rehabilitation and extension of investment projects.

Fields of national investment

- 7- This Act encourages investment at the national level to achieve the objectives of development and investment, in the different fields as the regulations may specify

Prohibition of Discrimination between projects

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

CHAPTER III THE Council

Establishment and Formation of the Council

- 9- (1) There shall be established a Council known as the “Higher Investment Council” formed by a decision of the President of the Republic and shall be under his presidency, and the membership of a number of persons representing the related bodies.
- (2) The Authority Chairperson shall be a member and rapporteur .

Functions and Powers of the Council

- 10- The Council is the supreme authority, responsible for the investment affairs, and without prejudice to the generality of the above mentioned, the Council shall have the following functions and powers, namely to:-

- a) Pass the general policies, strategies, plans, programs necessary for achieving investment objectives and follow up the execution thereof.
 - b) Prepare a climate capable of attracting investment, removing obstacles, and facilitating performance of duties .
 - c) Specify fields and priorities of investment, set out general directives according to the public policy and investment map.
 - d) Form technical committees the powers and functions of which are to be specified by regulations.
 - e) Revise directly or indirectly related investment laws.
 - f) Approve the least developed areas as may be specified by regulations.
 - g) Co-ordinate between related bodies, at the national and state levels.
 - h) Supervise the good performance and consider reports submitted thereto by the Council, and issue the suitable directives .
 - i) Approve the budget and final accounts prepared by the Authority.
 - j) Approve the organizational structure, and terms of service of the Authority's employees.
 - k) Consider grievances and appeals raised by the investors.
 - l) Set out internal regulations to organize its work and hold its meetings.
 - m) Any other functions or powers, granted thereto in accordance with the provisions of this Act, or are deemed necessary to achieve its objectives.
- 2) The Council may delegate any of its powers to the Chairperson.
 - 3) The Council shall have executive office for co-ordination and follow up.

CHAPTER IV
THE Authority

Establishment and Seat

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

Functions and Powers
of the Authority

- 12- The Authority shall have the functions and powers necessary for achieving the objectives of this Act, and without prejudice to the generality of the above mentioned, shall have the following functions and powers, namely to:-
- a) Prepare the proposal of investment priorities and submit the same to the Council.
 - b) Prepare the investment map, according to the state policy and sectorial map prepared by the competent ministries and submit the same to the Council.
 - c) Grant preferential concessions for projects that satisfy the conditions as specified by the regulations.
 - d) Provide basic information and demonstrate policies to investors.
 - e) Prepare preliminary indicators for investment projects and propagate the same.
 - f) Make recommendations such as to specify the least developed areas and submit them to the Council for approval in accordance with the provisions of regulations.
 - g) Issue licenses for investment, applications proceed on transactions pertaining to projects, and examination thereof, grant licenses and concessions, and make decisions in

- coordination with competent bodies in accordance with public policies.
- h) Expropriate national lands allocated for investment projects which are not invested within the period prescribed in regulations.
 - i) Organize conferences, workshops, exhibitions, seminars, participate therein in coordination with relevant bodies.
 - j) Request data and information related to investment.
 - k) Coordinate with the related bodies at the national and states levels.
 - l) Any other powers necessary for achieving the objectives of this Act assigned thereto by the Council.

Appointment of the Chairperson of the Authority

- 13- The Authority 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 the Chairperson

- 14- The Chairperson of the Authority shall be a member and rapporteur of the Council and shall prepare the preparatory materials for the Council works and shall be responsible for management of the Authority, and without prejudice to the generality of the above mentioned, the Chairperson shall have the following functions and powers, to:-
- a) Submit programs, annual plans and periodical reports on the works of the Authority to the Council.
 - b) Submit the proposed budget and final accounts of the Authority to the Council for approval.
 - c) Take any procedures deemed to be necessary for organizing and managing the Authority.

- d) Represent the country in regional and international forums pertaining to investment.
- e) Sign, such as the regulations may specify, contracts, agreements and documents on behalf of the Authority.
- f) Grant licenses for national investment projects.
- g) Grant total or partial privileges and facilities provided for in this Act.
- h) Delegate, with conditions and safeguards he sees fit, any of his powers and functions to any employee he sees fit or to any committee he may form.
- i) Undertake all necessary duties for execution of his functions and powers, and any other duties assigned thereto by the Council.

Appointment of the Secretary General

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

Functions and Powers Of the Secretary General

16. The Secretary General shall be the first executive official accountable 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 regulating the same.
 - b) Take the necessary administrative procedure, pertaining to the performance of the Authority such as may be specified by laws and regulations.
 - c) Submit periodical reports on the Authority's work to the Chairperson.
 - d) Set out performance plans, criteria, indicators and basis of evaluation.

- e) Prepare technical studies, researches and papers through the Authority departments and submit the same to the Chairperson.
- f) Receive recommendations issued by the investment units in competent ministries and submit them to the Chairperson.
- g) Cooperate and coordinate with investment units in the States and competent ministries to insure the execution of investment policies.
- h) Undertake all necessary works for performing his functions or other functions assigned to him by the Chairperson.

Chapter V
One-stop Shop System
And functions of competent ministries

One-stop Shop System

17. (1) There shall be established a one-stop shop system with membership of delegates from competent ministries and relevant bodies.
- (2) The delegates representing competent ministries and relevant bodies shall be considered fully delegated by the represented bodies and shall have the same functions and powers granted to such bodies .
- (3) The delegates shall be affiliated administratively to the Authority and technically to the bodies they represent, such as may be specified by regulations.
- (4) Notwithstanding the provisions of any other law, all procedures pertaining to providing services to the investor shall end through the one-stop shop system including the payment of fees against such services.

(5) Bodies undertaking investment affairs in the States shall establish the one-stop shop system in conformity with the pattern used by the Authority.

Duties of competent ministries
in the fields of investment

18. Competent ministries, each in its field, shall undertake the following duties, namely to:-
- a) Specify the priorities and set out policies pertaining to investment.
 - b) Prepare sectorial maps pertaining to investment .
 - c) Grant the preliminary approval for the establishment of the project upon the presentation of the technical, economic, environmental, and social feasibility study through the delegate of the one-stop shop system within the prescribed time frame .
 - d) The Authority shall provide the competent ministry with a copy of the final project license .
 - e) Follow up the execution of the projects and submit periodical reports thereon to the Authority.

Chapter VI
Strategic Investment Projects,
Exemptions and Concession

The Strategic Investment
Project

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

Exemption from Value Added Tax

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

Exemption from customs Duties

21. (1) The Authority may grant the project exemptions from:-
- a) Customs duties on capital preparations, which are not, provided for in customs tariffs, in coordination with the competent ministry, provided that the exemption for the State investment project shall be upon recommendation of the State Minister to the Chairperson of the Authority.
 - b) Customs duties on 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 projects, which is not provided for in the customs tariff, shall be subject to the same tariff rate imposed on the production inputs in custom such as may be specified by regulations.

Survey and Demarcation of land allotted to national Investment projects

22. (1) Notwithstanding the provisions of any other law, the Authority may in coordination with states authorities, allocate land for establishment of the national strategic investment projects at encouragement rate .
- (2) The Authority may renew the leasehold of the project land in coordination with states authorities .
- (3) The competent bodies in the states shall undertake the registration of industrial and service land, and make the technical and detailed planning, and the necessary maps, and deposit the same with the Authority for allotment.
- (4) The competent bodies in the states shall undertake the registration of agricultural land, carry out the technical survey, detailed planning, and deposit the same to the Authority for allotment.

Delivery of land allotted

For the project

23. The land allotted for the project shall be handed over within a maximum period of one month from the time of its registration, and shall be registered as soon as the project is completed.

Chapter VII

Safeguards and procedures

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 the regulations thereof.

Grant of License

25. (1) The Authority shall, upon the receipt of the license application for any project, grant the preliminary approval within a maximum period of one week where the project satisfies the requirements.
- (2) The Authority shall grant the license within a period not exceeding one week from the time of receiving the business name.
- (3) Where the license application is refused, the decision thereof shall be justified.

Appeal

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

Conditions for continuity

of enjoying License

27. (1) The Investor may, with the approval of the Authority, and recommendation of the competent Ministry, within the period of validity, take any of the following procedures to :-
- a) Make any amendment or change in the size or purpose for which the license is granted, or transfer the project from its prescribed place.
 - b) Utilize or sell any specialized or auxiliary machineries or equipment or means of conveyance to which certain privileges are granted, for any purpose, other than the purpose to which the license is granted, whenever all due legal obligations are fulfilled.
 - c) Change the purpose of use of the land allocated for the project .
 - 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 such as the regulations may specify.

Duties of the Investor

28. The investor shall:-
- a) Execute the project, by establishing buildings, necessary constructions in accordance with the maps approved by the competent bodies, within a period not exceeding one year from the time of signature of contract, unless such period is extended for any suitable period by a decision from the Authority.
 - b) Fully utilize the project land in accordance with the purpose of the license and the approved maps.
 - c) Submit, within the validity of the privileges periodical reports, to the Authority and competent Ministry, every three months, on the process of execution.

d) Hold regular books, and keep records on which assets and imported materials that are exempted from custom duties are registered.

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

f) Notify the Authority and competent Ministry where the project utterly ceases to work or operate, 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 in accordance with the provisions of this Act the following guarantees and facilities:-
- 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 the project funds, confiscation, expropriation, freezing, reservation or imposing custody thereof; save as by a judicial order, or order from the competent Bureau.
 - c) Remit the invested money in case of non execution of the project, liquidation, or disposal thereof in any manner with the approval of the Authority and upon the fulfillment of all the legal obligations .
 - d) Re-export, sell, or waive machineries, equipment, goods, apparatuses, means of conveyances and other requirements

imported for the project in case of non execution of the project in whole or 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 the loan at the due date, after the payment of the due legal obligations.

f) Bring raw materials necessary for the project and products thereof.

(2) For the purpose of sub-section (1), the invested capital is to be calculated in foreign currency, and the corporeal capital elements shall be assessed by the Authority in coordination with the competent bodies.

(3) The Investor shall enjoy the followings:-

a) Import the licensed labors in accordance with the conditions and safeguards such as may be determined by laws and regulations regulating the same.

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

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

Investment Map

30. The Authority, In cooperation and coordination with competent bodies and States, shall prepare the National Investment Map in accordance with the policies and general investment directives, and shall submit the same to the Council for approval.

Ban of fees on project

31. Notwithstanding the provisions of any other law, fees, charges, duties, and administrative fees, on the national investment project, or national, or state strategic project shall

only be levied in consultation and agreement with States and relevant bodies having connection within the frame of the Council.

Protection of projects

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

Contraventions of provisions of this Act

33. (1) The Investor is deemed to have committed a contravention to this Act, where he violates the provisions of Sections 24, 27 or 28.
- (2) Without prejudice to any other penalty provided for in any other law, the Authority may, upon recommendation of the competent Minister in case of Investor committing any of the contraventions provided for in sub-section (1), according to the size of the contravention and circumstances of its commission and extent of detriments occurring to the 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 the license and granted privileges thereof and restitution of land lease granted in accordance with the provisions of this Act.

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

(4) The Investor against whom a decision is passed in accordance to sub-section (2), may appeal to the Council, 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 from resorting to the competent Court.

Chapter IX

Financial Provisions, Account and Audit

Financial Resources

34. The financial resources of the Authority shall consist of:-
- a) Resources allocated by the Government;
 - b) Any other resources approved by the Council.

Accounts, Books Keeping and Auditing

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

Annual Budget

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

Auditing

37. The National Audit Chamber shall audit the Authority accounts at the end of each financial year.

Statement of Final Account
and Report of National Audit Chamber

38. The Secretary General shall, within six months of the end of the financial year, annually submit a statement of financial accounts accompanied by a report from the National Audit Chamber, which the Chairperson of the Authority shall submit to the Council.

Chapter X
Settlement of Investment
Disputes

39. (1) With the exception of disputes such as may be governed by Agreements provided for in sub-section (2), where any dispute relating to investment arises, such dispute shall initially be referred to the competent Court, unless the parties had agreed to refer to arbitration or conciliation.
- (2) The provisions of the Unified Agreement for Investment of Arab Capital in Arab Countries 1980, the Agreement on Settlement of Investment Disputes Among Arab Countries 1974, the Agreement of Settlement of Disputes Between States and Citizens of other States 1965, the General Agreement on Economic, Technical, and Commercial Cooperation among Members of Islamic Conference Organization 1977, and any other Agreement in this respect to which Sudan is a party, shall be applicable on any legal disputes which arises directly from the said Agreements.

Establishment of Specialized
Courts

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

Establishment of Specialized
Bureaus

41. The Minister of Justice shall establish specialized bureaus for investment contraventions.

Power of making regulations

42. (1) The Council 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 include:-
a) Determination of kind and size of strategic projects, such as may be granted preferential privileges.