

Sudan

The Investment (Encouragement) Act, 2021 (2021)

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In the name of Allah, the Gracious, the Merciful

The Investment (Encouragement) Act, 2021

Be it hereby, passed by the Sovereignty Council and the Council of Ministers, in the Joint Session, in accordance with the provisions of the Transitional Period Constitutional Instrument, 2019, the following Act:-

Chapter I Preliminary Provisions Title and Commencement

1. This Act may be cited as the, "Investment (Encouragement) Act, 2021", and shall come into force, as of the date of signature.

Repeal and Saving

2. The National Investment (Encouragement) Act, 2013, shall be repealed; provided that the regulations and measures taken thereunder shall remain in force until amended, or revoked under the provisions of this Act.

Interpretation

3. In this Act , unless the context otherwise requires:-

"Investment land", means the land located within a geographical location with a specific area for investment purposes, as may be specified by the regulations;

"Investment", means utilization of a private, public or joint capital, in an investment activity for the purposes of profit and achieving economic benefit;

"Investment strategy", means the National Strategy for Investment which includes visions, objectives and the general policies of investment, as may be consistent with the State policies;

"Competent body", means the National or regional ministries having connection with investment;

"Relevant bodies", mean the government units having connection with investment;

"Rehabilitation", means expansion or modernization of a project as may achieve increase in the volume of goods and services rendered, or improvement of the quality of product or service rendered, or modernization of the existing mechanisms;

"National investment map", means the document which specify the investment plan and map, the type and system of investment, including the investment projects, areas of geographical investment, its sectors and land available therefor;

"Investment plan", the investment plan stemming from investment strategy which includes the strategic objectives of investment and lay down investment policies in accordance with indicators necessary for success and follow-up;

"State investment operations room", means the operation room tasked for documentation and coordination the relation between the Council and the states;

"Investment land operations room" means Investment land unit to coordinate with the state to define the investment lands;

"Special investment list", means the list including economic and activities sectors, which are not available for foreign investment;

"Invested fund", means money paid by an investor in cash or in kind to be used for establishing, operating, expanding, modernizing or rehabilitating the project;

"Organ", means the Organ established under the provisions of Section 6;

"State project", means an investment project established in a state in accordance with the standards, as may be prescribed by the Council, and to which conditions of a national project do not apply;

"Investment project", means any economic activity licensed in accordance with the provisions of the Law;

"National project", means any trans-state investment project based on investment or exploitation of national or subterranean resources, or that to which the State is a subscriber, or that having impact on local communities, or that controls State strategic goods or services, including the foreign investment;

"Strategic project", means a project established under an agreement with the Government of Sudan;

"Investment Commissioner", means the person in charge of investment affairs and technically affiliated to the Ministry;

"Coordinator", means representative of the technical body concerned with investment at the single window;

"Single window", means a unit to simplify and facilitate the completion of investment transactions, and include all competent bodies with investment;

"Under-Secretary", means the Under-secretary of the Ministry;

"Ministry", means the Ministry of Investment and International Cooperation;

"Minster", means the Minister of Investment and International Cooperation.

Objects of the Act

4. This Act aims at:

(a) preparation of a conducive environment to attract investment, as may be consistent with the State strategic economic and developmental objectives and priorities;

(b) increment the rates of economic growth, local production, productivity, and value-added, in addition to provide job opportunities, improvement of balance of trade, utilization of natural and human resources, transformation of relative advantages into competitive advantages as may contribute to attainment of sustainable and balanced development;

(c) deepening and propagating awareness of the importance of the local and foreign investment, and promoting investment environment;

(d) expansion, diversification and localization of production base and raise the rates of local production;

(e) transfer and localization of knowledge, technology, methods of modern administration, scientific, technical and marketing expertise, for the purpose of human capacity building and upgrading.

General Principles

5. Investment projects in Sudan shall comply with the following principles, to:-

(a) concentrate on sectors that support and stimulate national economy;

(b) satisfy domestic and regional market needs and realize economic diversification;

(c) support and develop entrepreneurship, innovation, growing, small and medium companies;

(d) provide business opportunities for youth and small investors;

(e) protect environment and public health;

(f) concentrate on the private sector and making smart partnerships between the private and public sectors;

(g) encourage scientific research, development, introduction of advanced technologies to various fields of production;

- (h) train and upgrade capacity of labor force and link the same to the objectives of the fourth industrial revolution;
- (i) develop domestic institutions and local companies to keep pace with international investment companies;
- (j) motivation the responsibility towards population of areas where investment projects are located;
- (k) Maximize the returns from local component of investments, utilize the local labor force, provide services and purchase goods from the local markets;
- (l) transparency and combating corruption

Chapter II The Organ

Establishment and constitution of the Organ and the Units supervises thereof

6. There shall be established an organ to be known as the, "Investment Organ and Private Sector Development and the Units

Supervises thereof", having corporate personality, a common seal, and shall be constituted by a decision of the Council of Ministers, of a chairman, and a number of members representing the bodies having connection; provided that the Minister shall be the Organ chairman.

(2) The Council shall supervise the following units:

- (a) investment encouragement and investors promotion;
- (b) public and private partnership;
- (c) markets and free zone;
- (d) small and medium entrepreneurship companies.

Functions and powers of the Organ

7.(1) The Organ (Council) shall be the highest authority in charge of investment affairs; and without prejudice to the generality of the foregoing, the Organ (Council) shall have the following functions and powers, to:-

- (a) approve the general policies, strategies plans and programmes, as may be necessary to achieve the investment objectives and followup the implementation;
- (b) provide an attractive environment for investment, remove the obstacles and facilitate the performing of business;
- (c) specify the investment fields and priorities, and laying down general directives, in accordance with general policies and investment map;

- (d) form technical committees to assist in discharging its duties; and the regulations shall specify the functions and powers thereof,
 - (e) review the laws pertaining to investment;
 - (f) supervise the proper functioning, and consider the reports submitted thereto by the various units, and issue appropriate directive with respect thereto;
 - (g) approve of the organizational chart, terms of employees service and submit the same to the Competent bodies for approval;
 - (h) coordinate between the bodies having connection with investment at the national and state levels;
 - (i) approve the least developed areas, as the regulations may specify;
 - (j) approve the Organ annual budget and final accounts and submit the same to the Competent bodies for approval;
 - (k) exercise any other functions and powers, as may be granted thereto, under the provisions of this Act, or as may be necessary and essential for the achievement of its objects;
 - (l) submit periodical reports to Prime Minister, on the performance of the business thereof;
 - (m) make an internal regulations, as may be necessary for organizing the business and holding the meetings thereof;
- (2) The Organ may delegate any of the powers thereof to the Chairperson or the Rapporteur.
- (3) The Organ shall have an executive office for coordination and follow-up.

Functions and powers of the Under-secretary

8. The Under-secretary shall be the chief executive officer, responsible for discharge of his duties; and without prejudice to generality of the foregoing, he shall have the following functions and powers, to:-

- (a) spend funds within the limits of the approved budget, the laws and regulations organizing the same;
- (b) take the necessary administrative procedures pertaining to the performance of the Organ, as the regulations may specify;
- (c) submit periodical reports on the Organ business;
- (d) lay down performance plans, standards, and indicators for the evaluation thereof;
- (e) prepare the technical studies, research, and papers by the Ministry departments, and submit the same to the Organ;
- (f) submit the recommendations issued by the investment units at the competent ministries, to the Minister.

Chapter III The Single Window and duties of competent bodies

The Single window

9.(1) There shall be established at the Ministry, a “single window” system, to be constituted of a number of coordinators at the competent ministries and bodies having connection.

(2) The bodies that assume the investment affairs at the states, shall establish a single window system, along similar lines of the single window system at the Ministry.

(3) The regulations shall specify the services to be rendered through the single window system.

The competent bodies duties

10. The Competent bodies, each in the field of specialty, shall discharge the following duties:-

(a) specify the priorities and lay down the general policies, pertaining to investment;

(b) prepare the sectoral maps, pertaining to investment;

(c) initial approve for the establishment of the projects upon technical, economic and social feasibility studies, through investment coordinator;

(d) follow-up the projects implementation and submit periodical reports with respect thereto, to the Ministry.

(e) specify the investment coordinators, from the various bodies to work in the single window; provided that their grades shall be from the higher leadership grade.

Investment Coordinators

11.(1) The investment coordinators shall be deemed as fully authorized by the bodies which they represent, and shall have the same functions and powers of the bodies they represent.

(2) The coordinators shall be technically affiliated to the Ministry and administratively to the bodies they represent.

(3) The coordinators shall be competent with the technical review of the investment licenses applications, and any other tasks as the regulations may specify.

Single window procedures

12. The procedures pertaining to licensing and rendering services to investors, shall be carried out through the single window system.

Investment lands operations room

13.(1) There shall be established, an Investment Lands Operations Room, by a decision of the Minister, to be presided by him, and membership of the representatives of the bodies having connection with the lands.

(2) The regulations shall specify the room tasks and the functions thereof.

State investments operations room

14.(1) There shall be established, an Investment State Operations Room, by a decision of the Minister, to be presided by him, and the membership of the state investment commissioner.

(2) The Room shall be competent to control, develop and coordinate the relation between the Ministry and the states in achieving the investment national objects.

Chapter IV Investment Priorities and Policies

National Investment Strategy

15.(1) The Ministry shall prepare a national strategy for investment, every five years, in coordination with the states and in consultation with the competent bodies with investment, and stakeholders to be approved the legislature.

(2) All the bodies shall commit with the provision of information necessary for preparation of the strategy, as may be specified by the regulations.

Annual Investment Plan

16.(1) The Ministry shall prepare an annual Investment plan, in consultation with the competent bodied, and shall be approved by the Council of Ministers.

(2) The annual Investment plan, provided for by Sub-section (1), shall include the specified priorities, policies and activities.

(3) All the bodies shall commit with the provision of information necessary for the preparation of the annual investment plan.

National Investment Map

17.(1) The National Investment Map shall be deemed, as the executive instrument for the National Investment Plan.

(2) The Ministry, states, and sectoral ministries, shall prepare the National Investment Map, in consultation with the competent bodies and stakeholders, and shall be updated every three years.

(3) The National Investment Map shall be approved by the Legislature.

(4) The lands owned by the State or other public corporate bodies that are earmarked for investment, and systems and methods of disposal thereof, shall be specified, as to the type of investment system.

(5) The National Investment Map shall be periodically reviewed, whenever necessary, upon proposal by the Minister.

(6) The National Investment Map, shall include an annual implementation plans, whereby the required indicators to follow-up and evaluate implementation of investment activities are specified.

(7) The implementation plans approved by in Sub-section (6), shall be periodically reviewed, at least once every six months.

Special investment list

18. The special investment List, shall include a number of economic sectors and activities, which are not available for foreign investment, and shall be specified by the Organ upon recommendation by the

Minister.

Chapter V Investment guarantees and privileges

Investment Guarantees

19. (1) All the investments established in the Sudan, shall enjoy just and fair treatment.

(2) The State shall ensure to the Foreign Investors a treatment similar to that of the national investors.

(3) The invested funds shall not be subject to any arbitrary measures, or any discriminative decisions.

Investment Privileges

20. The investment projects that achieve economic benefit and commit with the investment principles and objects shall be granted the following privileges:-

(a) customs exemptions:-

(i) the Investment projects shall be exempted from custom duties on the projects imports of capital equipment, in coordination with the competent

bodies ;

the specialized means of transport shall be exempted from customs duties, as the regulations may specified;

(ii) the production inputs of investment projects shall be subject to the same fees category imposed by customs Tariff on production inputs, as the regulations may specify;

(b) exemption from business profits tax:

The investment project shall be exempted from the business profits tax for a period not exceeding five years as from the date of commencement of the commercial production, as the regulations may specify;

(c) exemption from Value Added Tax:

The investment project capital equipment shall be exempted from the Value Added Tax as to the list approved by the Ministry;

(d) land allocation privilege:-

(i) there shall be vested to the Government of Sudan, the ownership of all the lands, save lands owned by free holds.

(ii) the investment lands operation room shall lay down general safeguards pertaining to every individual project with respect to granting investment lands, and lay down disposal restrictions on the Business name owned by an individual, partnership or the company for which an investment land is allocated thereto;

(iii) the investment lands operation room shall prepare the lands for investment projects, in consultation and coordination with the state, as may be specified by investment map and other safeguards;

(iv) the investment lands operation room at the Ministry, shall assume the allocation investment lands, as to the National Investment Map issued thereby the same and in accordance with national priorities;

(f) granting of preferential incentives:-

(i) the Organ may grant concessions to projects, as the National Investment Map and the National Investment Plan may specify, and in accordance with the safeguards specified by the regulations.

(g) duration and Criteria for enjoying privileges:

the project shall enjoy the privileges granted, under the provisions of this Act, until the end of capital recovery period as to the feasibility study approved by the Organ and the project executive programme, submitted to the Organ by specialized houses of experience.

Facilities

21.(1) Non-Sudanese investors, shall be granted residence throughout the duration of the project, without violation to the provisions of the laws organizing the same and as the regulations may specify.

(2) The Organ shall be committed to fix the fees and returns, as may encourage competition between the investments in Sudan and raise the burden on local and foreign investors.

(3) the subordinate State investments operations room shall coordinate the types and amounts of fees and returns at the centre and states levels.

(4) There shall not levy administrative fees or returns on the investment projects, save upon the Ministry approval.

Chapter VI Licensing

Minimum Invested Capital

22.(1) The regulations shall specify the minimum invested capital allowed for a foreign investor.

(2) The foreign investor shall deposit earnest money before being granted a license, as the regulations may specify; provided that it shall not be less than two hundred and fifty thousand Dollars or what equivalent thereof in foreign currencies acceptable by the Central Bank, through external transfer, and spending therefrom shall be on the implementation of the investment project after obtaining the license.

License Granted

23.(1) Every person may establish an investment project after obtaining a license, in accordance with the provisions of this Act and regulations made thereunder.

(2) They shall consult the state authority and stakeholder, in the case of a national project, to safeguard rights.

(3) The issuance of license shall be subject, to the application of project eligibility criteria, in accordance with the provisions of this Act..

(4) The license period shall be three years renewable after satisfying the required information, as may be specified by the regulations.

(5) The license shall be cancelled and all the privileges granted to the investment project shall be removed, in case of failure to implement the project within the license period.

(6) The regulations shall specify the procedures for granting licenses.

The disposal of the investment project prohibited

24.(1) The investor subject to the provisions of this Act, and save after obtaining a written approval by the Minister, and as to the period as may be specified by the regulations, shall not conduct any of the following disposals:-

(a) amendment or change in the project size or the purpose for which the license has been granted, or transfer the project from the identified location in the license; upon approval by the competent body;

(b) use or sale of equipment , machinery, apparatus, materials, or auxiliary means of transport which privileges were granted with respect thereto, for any purpose other than the purpose for which the license is granted therefor, after satisfying all any legally due obligations on the project;

(c) mortgage of the project, equipment, machinery or means of transport which have been granted thereto, for the purpose of obtaining the necessary finance to only support the project; (d) Dissolution of partnership or waiver.

(2) There shall not be permitted the disposal of the land allocated for the investment project by sale or mortgage; save after being completely invested, as the regulations may specify.

(3) There shall not be permitted proportion of the activity of a single investment project, or divided the same by any of ways of division or proportion.

Chapter VII General Provisions Issuance of Investment Register

25.(1) The Ministry shall prepare an investment register and shall be registered therein, all the licensed investment entities, pursuant to the provisions of this Act, and all the applications, licensing, privileges, exemptions, penalties relating thereto, as it include all the documents and data having connection.

(2) The Minister shall issue such necessary decisions showing the way in which such a register is prepared, contents, method of recording therein, documents and data required therefor; and shall be placed in modern and secrecy systems.

Investment procedural guide

26.(1) The Minister shall, within ninety days of coming into force of this Act, issue in coordination with the competent bodies, Investment procedural guide, which include the conditions, procedures, timeframes prescribed for land allocation, issuance of approvals, permits and licenses pertaining to investment activities which are subject to the provisions of this Act, to facilitate licensing procedures, clarified and unified for all investors.

(2) The Ministry shall publish the investment procedural guide and its publications with the bodies having connection through the website of the Organ.

(3) The Ministry shall be bound to periodically review and update the investment procedural guide whenever the necessary requires so to do, in light of the amendments to the legislations in force in the State.

Establishment of Insurance Security Investment Company

27. (1) There shall be established a company to be known as the, “ Insurance security on national and foreign investment company” ., under the Companies Act, 2015, or any other law as may replace the same; provided that among the company objectives, is insurance on the following:-

(a) risks of restriction on currency remittance;

(b) risks of appropriation and nationalization;

(c) risks of war, domestic conflicts and civil disobedience;

(d) risks of recession the contract in contravention to the provisions of the law and violation thereof;

(e) non-commercial risks as to the relevant international agreement having connection.

(2) The investor may insure the project against for annual premiums to be fixed in the company memorandum of association, and the Ministry may contribute in the premiums as to its discretionary power;

provided that the State contribution shall be as deduction from the project obligations towards the State.

(3) The company may re-insure with the International Arab institutions, on which the Sudan is a member.

The social responsibility of the investor

28. (1) The investor and for achieving a comprehensive and sustainable development objects, may allocate a percentage compatible with the project annual profits, to be used in establishing a system for community development outside his investment project; provided that it shall be deducted from amounts on which the taxes is calculated.

(2) The shall specify the type and amount of the investor`s social corporate responsibility, upon issuance of the license, as regulations may specify.

(3) The investor may contribute in all or some of the following fields:

(a) take the necessary measures for environmental conservation and improvement;

(b) render services or programmes in the field of health, social or cultural care, or in any of the other development field;

(c) support the technical education, finance research, studies or awareness-raising campaigns, targeting upgrading and improvement of production, by agreement with one of the universities or other scientific research institutions;

(d) training and scientific research;

(e) any other fields by agreement with the competent authorities.

(4) The Minster, in coordination with the concerned ministries, may establish a list of the best projects that carry out community development activities whether from the geographical, sectoral or others, and shall announce the same to the public opinion.

(5) It shall be, in all cases, prohibited the use of projects, programmes or services rendered, under the social responsibility, for any political, partisan, or religious purposes, or involve any discrimination among citizens.

(6) The regulations shall specify safeguards and basis for the application of social responsibility.

Chapter VIII Financial provisions, accounts and audit

Financial resources

29.(1) The financial resources of the Organ shall consist of the following:- (a) such appropriate as the State may allocate thereto;

(b) any other financial resources, as the Minister of Finance and Economic Planning may approve.

Accounts, books Kept and Audit

30. The Organ shall keep a proper and comprehensive accounts of the business thereof, in accordance with the sound accountancy basis, provided for in the Financial and Accountancy Procedures Act, 2007 and the regulations made thereunder.

Annual budget

31. The Organ shall have an annual budget, the estimates thereof shall be prepared by the Under-secretary; provided that the same, shall be submitted to the Organ for approval.

Audit

32. The National Audit Chambers shall audit the accounts of the organ, at the end of every financial year.

Final accounts statement and the National Audit Chamber report

33. The Under-secretary, annually and within a period, not exceeding, six months from the end of the year, shall submit to the Minister a statement of the final account together with a report from the National Audit Chambers to be submitted to the Council of Ministers.

Chapter IX Final provisions Investment disputes resolution

34.(1) Save for disputes governed by the provisions of the conventions, set out in Sub-section (2), where any legal dispute, pertaining to investment, aroused, the same shall first be referred to the competent court, unless the parties agreed to refer it to the arbitration or conciliation.

(2) The provisions of the Unified Agreement for the Investment of Arab Capital in the Arab countries, 1980; the Agreement on Settlement of Investment Disputes between Arab Countries, 1974; the Agreement on the Settlement of Investment Disputes between States and

Citizens of other States, 1965; the General Agreement on Economic, Technical and Trade Cooperation between Member States of Organization of Islamic Conference , 1977; and any other agreement with respect thereto, to which the Sudan is a party thereof, shall apply to any legal dispute as may directly arise from such agreements.

Establishment of specialized courts

35. The Chief Justice, shall establish a special courts to consider the suits pertaining to investment.

Establishment of specialized Prosecution Bureaux

36. The Attorney General, shall establish a specialized prosecution bureaux for the contraventions pertaining to investment.

Contraventions and sanctions

37.(1) The Minister, upon commitment by the investor of any of the contravention to the provisions of Sections 23 or 24, may inflict any of the following sanctions:-

(a) a warning in writing to remove the causes of

contravention within the period to be specified thereby;

(b) fully or partial deprivation of granted privileges and exemptions, as the regulations may specify;

(c) suspension from work pending the removal of

contravention;

(d) cancellation of the license, in the case of contravention of the provisions of the Act, or the regulations made thereunder, or contraventions of the conditions upon which the license is granted;

(e) cancellation of the license where the investment project suspend its activity or practicing its business for a period exceeding one year, without notifying the Organ , or delay for a period exceeding one year, as of the date of the commencement of the actual operation of the timetable submitted by the investor upon application of licensing without acceptable cause;

(2) Sanctions inflicted under Sub-section (1), and the regulations made thereunder, shall be registered in the investment register pertaining to the investment project.

Grievances Committee

38.(1) The Organ shall constitute a committee to consider the Grievances and complains against the decisions issued, in accordance with the provisions of this Act.

(2) The regulations shall specify the procedures of considering grievances, and the manner of passing decisions.

(3) The Committee shall determine in grievance within a maximum period of three weeks as of the date of receiving the application.

Power to make regulations

39.(1) The Organ may make the regulations necessary for implantation of the provisions of this Act.

(2) Without prejudice to the generality of the foregoing Sub-section (1), such regulations may include the following:-

(a) specifying the type and size of the strategic projects which have granted concession;

(b) laying down safeguards for prevention of intersection between national and state investment;

(c) procedures for granting licenses and privileges, and specifying their types, size, and the extend thereof;

(d) fixing service fees;

(e) safeguards and basis pertaining to control and follow-up of the projects licensed under the provisions of this Act.

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