

SUDAN INVESTMENT LOW

Chapter 1 (Preliminary Provisions)

Title and commencement

1. This Act may be cited as the, "Investment Encouragement Act, 1999" Amended (2003), and shall come into force, as from the date of signature.

Repeal and saving

2. The Investment (Encouragement) Act, 1996 shall be repealed; provided that the regulations and orders made, and measures taken thereunder, shall remain in force, as if they have been made, under the provisions of this Act, until revoked, or amended.

Provisions of the Act to prevail

3. The provisions of this Act shall, in case of inconsistency with the provisions of any other law, prevail to the extent of removing the inconsistency between them.

Application

4.(1) The provisions of this Act shall apply, as to such extent, as may achieve the objects thereof; provided that the provisions of the same shall not prejudice such privileges, exemptions and otherwise of guarantees, as may be prescribed to the projects existing at the time of coming into force of this Act.

(2) Notwithstanding the provisions of sub-section (1), all the exemptions granted to imports of the projects, in accordance with the provisions of the previous Investment Acts, shall be revoked, and there shall apply, with respect thereto, the provisions of section 11, hereof; provided that there shall be excluded, from the same, such projects, as may be existing, at the date of coming into force of this Act, which are organized by special agreements, concluded with the Government of the Republic of the Sudan.

Interpretation

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

"Competent Minister", means any of the Federal Ministers;

"Invested money", means :-

(a) the local currency paid by the Investor and used in the establishment, operation, of the project;

(b) the foreign convertible currency converted through one of the banks registered with the Bank of Sudan, which is used in the establishment, operation, of the project;

(c) the local currency, by which satisfaction, upon the approval of the competent bodies, is made to meet obligations due for payment to the Investor, in foreign currency, where the same is used in the establishment, operation, of the project;

(d) the corporeal capital and any other corporeal rights, such as mortgages, debt securities and all the similar rights, dividends, shares and debentures pertaining to companies, and any form of participation therein, the machinery, equipment, apparatuses, materials and other requisites and the means of conveyance imported, from abroad, or the local ones, for the establishment, operation, of the project;

(e) the incorporeal rights and intellectual property rights, and include copy rights, trade marks, patents, industrial designs, which are used in the project; provided that such rights shall be registered, in accordance with the provisions of the law pertaining to each, and owned, by the Investor, or licensed to use the same, on the part of the proprietor thereof;

(f) such profits, as may be achieved by the project, where the capital of the project is completed therewith, or invested into any other project;

"Investor", means the person who invests his funds, in accordance with the provisions of this Act, into any project , whether he is Sudanese, or non- Sudanese;

"Minister", means the Minister appointed by the President of Republic of Sudan;

"Ministry", means the Ministry of Investment;

"Project", means any economic activity, whatever the legal form thereof, which is included into any of such fields of investment, as may be set out in this Act, and such , as may be prescribed by the Council of Ministers, in accordance with the objects of encouragement of investment provided for in section 6, and the project is approved in accordance with the provisions of this Act;

"State Minister", means the State Minister, who is specified, by the State Council of Ministers , to have competence as to investment.

Chapter2(Encouragement of Investment)

Objects of encouragement of investment

6. This Act targets encouragement of investment into such projects, as may achieve the objects of the development policy, and the investment initiatives, on the part of the Sudanese and non-Sudanese private sector, the co-operative, mixed and public sector. Without prejudice to the generality of the foregoing, it aims at encouragement of investment into the projects of any of the fields set out in section 7.

Fields of investment

7. This Act encourages investment, into the fields of agricultural, animal and industrial activities, energy and mining, transport, communication, tourism and environment, storage, housing, contracting, infrastructure, economic, administrative and consultative services, information technology, education, health, water and culture and information services and any such other field, as the Council of Ministers may specify.

Discrimination between projects prohibited

8.(1) For the purposes of this Act, no discrimination shall be made between invested money, by reason of its being local, Arab or alien, or by reason of its being public, private, co-operative or mixed sector.

(2) No discrimination shall be made between such similar projects, as may be specified by the regulations, with respect to granting privileges or guarantees.

Chapter 3 (Privileges & Guarantees)

Branch I

Strategic projects

9.(1) Investment, in the following fields, shall be deemed strategic investment, namely :-

(a) relating to infrastructure, roads, ports, electricity, dams, communications, energy, transport, contracting business, education, health and tourist and information technology services and water projects;

(b) relating to extraction of subterranean and deep seas wealth;

(c) agricultural, animal and industrial production;

(d) crossing more than one state;

(e) any such other fields, as the Council of Ministers may prescribe.

(2) The regulations shall specify the strategic projects in the fields provided for in sub-section (1).

Exemption from taxes

10.(1) Subject, to the provisions of section 19, and without affecting any privileges, as may have been granted to any of the investment projects, in accordance with such conditions and safeguards, as may be in use :-

(a) the strategic project, specified in the regulations, shall after its registration, in accordance with the organizing laws, enjoy exemption from the business profits tax for a period of ten years, the effect of which shall commence, as of the date of commercial production, or practice of activity;

(b) the Minister may grant the non-strategic project exemption from the business profits tax, for a period, not exceeding five years, the effect of which shall commence, as of the date of commencement of commercial production, or practice of activity .

(2) Notwithstanding the provisions of sub-section (1)(a), the Council of Ministers, upon a recommendation, from the Minister, may extend the exemption of strategic and non strategic projects, as to such conditions and safeguards, as the regulations may specify.

Exemption from customs duties

11.(1) Subject, to the provisions of section 19, each of such strategic and non-strategic projects, as may be specified in the regulations, after registration thereof, in accordance with the laws organizing the same, shall enjoy such customs privileges, as the Council of Ministers may prescribe.

(2) Notwithstanding the provisions of sub-section (1), customs privileges shall, with respect to cars, salon cars, box cars and station wagons, be granted as the regulations may specify.

(3) The Council of Ministers may, upon the recommendation of the Minister, amend the prescribed customs privileges, as he may deem fit.

Project granted the privileges of allocation

of land and depreciation account

12. The Minister may grant such strategic and non-strategic projects, as may be specified in the regulations :-

(a) the land necessary for the strategic project free of charge, and at the encouragement price for the non-strategic project, in co-ordination with the bodies concerned, from such lands, as may have been planned by the competent bodies;

(b) the privilege of depreciation account of the assets, as to such renewal value, as may be specified by the regulations, and in accordance with the circuits of operation work;

(c) deeming any such loss, as may have occurred, during the period of exemption, provided for in sections 10, as if it is such loss, as may have occurred during the last year of such period.

Grant of privileges to State projects

13. The State Minister may grant such state project, as may be specified in the regulations, the following privileges :-

(a) total, or partial exemption, from such taxes and fees, as may be levied by a state, or local law, for a period not exceeding five years; provided that he may, upon the approval of the State Council of Ministers, extend such exemption for another similar period;

(b) any such other state taxes, or fees, as may subsequently be levied on the project;

(c) allocation of the land necessary for the state project, at the encouragement price , in co-ordination with the bodies concerned, from the lands allocated by the competent bodies.

State projects granted federal privileges

14.(1) The Minister, upon the recommendation of the State Minister, may grant a state project the privileges provided for in section 11.

(2) The State Minister, upon delegation by the Minister, may grant a state project the privileges, provided for in section 11, as to such conditions and safeguards, as the Minister may deem fit.

No taxes or fees levied on federal projects

15. No state, or locality shall levy any state, or local taxes, fees or rates, on any investment project federally licensed, during the period of the tax exemption, provided for in sections 10 and 11, save in consideration of such services, as may be of public nature, performed by the state, or the locality.

Preference privileges

16.(1) The Minister, upon the approval of the Minister of Finance, and in consultation with the Competent Minister may grant preference privileges to such projects, as may satisfy any of the following features :-

- (a) direct investment towards the least developed areas;
- (b) assist in the development of export capabilities of the country;
- (c) contribute to achievement of integrated rural development;
- (d) create great chances of work;
- (e) strive to encourage charitable trust;
- (f) strive to develop scientific and technological research;
- (g) re-invest the profits thereof.

(2) For the purposes of sub-section (1), privileges mean any of the privileges provided for in section 10, or 11, with respect to the size, extent, or term thereof, as the regulations may specify.

Branch III

Guarantees

Investment guarantees

17.(1) An Investor shall enjoy the following guarantees :-

- (a) the non-nationalization, or non-confiscation of his project, non- acquisition of all, or part of the estates of the project thereof, or his investments, for public interest, save by law and in consideration of just compensation;
- (b) the non-attachment, non-confiscation, non-custody or non-sequestration of the property of his project;
- (c) the re-remission of the invested money, in case of the non-execution of the project, at the outset, liquidation, or disposal of the same, in any of the ways of disposal totally, or partially, in the currency, in which it has been imported; on condition of satisfying all the obligations legally due thereon, and in the case of non- execution of the project, at the outset, machinery, equipment, apparatuses, means of conveyance and other requisites, which have been imported for the project, may be re-exported, whenever all the obligations, mentioned in this paragraph have been satisfied;

(d) the remission of the profits and the cost of financing for the foreign capital, or loans, in the currency in which the capital or loan has been imported, at the date of accrual, after payment of the obligations legally due on the project;

(e) the import of such raw materials, as the project may need, and the export of the products thereof, after the automatic registering , of the investment project, onto the Exporters and Importers Register.

(2) For the purposes of paragraph (c) of sub-section (1), the invested capital shall be specified in foreign currency ; and the elements of the capital in kind shall be evaluated by the customs authorities by the customs certificate of value (CCV) , or the import form (IM).

Privileges and guarantees of

the project protected

18. Notwithstanding the provisions of any other law, no administrative body shall refrain from implementing the Privileges and guarantees, granted under the provisions of this Act.

Chapter 4 (Safeguard of Investment)

Investor licensed to establish a project

19.(1) Subject to the provisions of section 4, no person shall establish any project, in the Sudan, save after obtaining a licence therefor, from the Minister, or the State Minister, as the case may be, in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (1) , no licence shall be granted, for mixed or foreign investments, by states, save after approval of the Minister.

Feasibility study of the project presented

20. No project shall be granted licence, nor shall it be granted any such privileges and guarantees, as may be set out in this Act, save after presenting a technical and economic feasibility study of the project.

Grant of licence and privileges requested

21. An application, for the grant of licence, for any project, or of any of the privileges provided for in this Act, shall be presented, on the prescribed form as follows :-

- (a) strategic and non-strategic federal projects, to the Ministry;
- (b) strategic and non-strategic state projects, to the State Minister.

Grant of licence

22.(1) The Ministry, or the State Ministry shall, upon receipt of a satisfied licence application, for any project, transfer the application to the federal Competent Minister, or the State Minister, as the case may be, within one week, to obtain the primary approval of establishing the project.

(2) The federal Competent Minister, or State Minister, as the case may be, shall determine the application for primary approval, and send the same, to the Ministry, or State Ministry, as the case may be, within seven days, of the date of receipt of such application.

(3) In case of not sending the primary approval, in the period provided for in sub-section (2), the Minister, or the State Minister, shall determine the application, after lapse of such period.

(4) In all cases, the Minister, or the State Minister, as the case may be, shall determine the licence application, within a period not exceeding thirty days , of the date of receipt of the satisfied application, from the Investor.

(5) Every applicant, for licence, shall be entitled to grievance, to the Federal, or State Council of Ministers, as the case may be, against the non-determination of his application, in accordance with the provisions of sub-section (1), to determine his grievance, within the period of one month, of the receipt of the satisfied grievance.

Land allocated for the project delivered

23. The Federal, or State Competent authority, shall deliver the land allocated for the project, within a maximum period of one month, of the date of granting the licence.

Conditions of the continued enjoyment

of the licence and privileges

24. No Investor shall take any of the following measures, during the period of validity of the licence and privileges, granted under the provisions of this Act, without obtaining a written approval , from the Minister, or the State Minister, as the case may be, the measures being to :-

(a) conduct any amendment, or alteration, of the size of the project, or the object for which the licence has been granted, or transfer the project, from the place thereof prescribed in the licence;

(b) use, or sell any of the equipment, machinery , apparatuses, materials or spare parts, with respect to which privileges have been granted, for any other purpose, other than the purpose, for which the licence has been granted;

(c) change the purpose of use of the land allocated for the project, sell, mortgage or hire the same totally, or partially.

Duties of the Investor

25. The Investor shall :-

(a) commence executing the project, within a maximum period of twelve months, of the date of receipt of the land, unless such period has been extended, on the part of the Minister, or the State Minister, for any such period, as he may deem fit;

(b) submit, to the Minister, the Competent Minister and the State Minister, periodical reports, every six months, during the period of validity of privileges, on the progress of the operation of executing the project, up to the date of commencement of production, or practice of activity;

(c) keep regular books, and maintain records, whereon shall be entered the assets of the project exempted from customs duties, and the exempted imported materials;

(d) present, to the Minister, the Competent Minister and the State Minister, annually, during the period of validity of the privileges, a copy of the annual accounts of the project, approved by a certified auditor;

The Investor contravening the

provisions of this Act

26.(1) An Investor shall be deemed to have committed a contravention of the provisions of this Act, where he :-

(a) contravenes the provisions of sections 19, 24 and 25;

(b) delivers false, or misleading information , or uses such unlawful methods, as may result in obtaining any benefit, in accordance with the provisions of this Act, for himself, or any other person;

(c) suspends the project, without reasonable cause;

(d) contravenes the laws of the country, in such way, as may endanger the security and safety thereof.

(e) Contravenes licence condition.

(2) Without prejudice to any such penalty, as may be provided for in any other law, the Minister, or the State Minister, as the case may be, may in case of commission, by the Investor, of any of the contraventions, provided for in sub- section(1), impose any of the following sanctions, in accordance with the size of the contravention and the circumstances of commission thereof, and the extent of such damages, as may affect the national economy :-

(a) warning him, to remove the grounds of the contravention, if the same is required, within such period, as he may specify;

(b) decrease the period of any of the privileges granted to the project, or the size thereof;

(c) not granting him any of the privileges and guarantees provided for in this Act;

(d) total, or partial revocation of the privileges, and the same shall result in binding the Investor to restitute the value of the material benefit gained thereby, from obtaining any previous privileges, where gaining such benefit results, from occurrence of the ground which led to the issue of the decision of revocation;

(e) revocation of the licence, and the same shall result in acquisition of the land granted to him under the provisions of this Act.

(3) An Investor in respect of whom a decision, under the provisions of sub-section (2), has been passed may submit his grievance, to the Federal, or State Council of Ministers, as the case may be, within one month, of the date of his being notified of the decision, and the decision, in this respect, shall be final; provided that this provision shall not prevent the Investor from access to courts.

Chapter 5 (Investment Organs)

The ministerial committee

27. The Council of Ministers, upon the recommendation of the Minister, may constitute a ministerial committee under the chairmanship of the Minister, and membership of the Minister of Finance and the Competent Minister, and the regulations shall specify the functions thereof.

Constitution of the committee

of commissioners

27A. The Minister shall constitute the committee of commissioners, from a chairman and a number of members, representing the competent bodies, having a relation to investment, from the ministries and competent government units; provided that the post of any of them shall not be less than the head of the unit, or whoever may deputize therefor, and shall fully be officially authorized, by the body which he represents, and the committee shall include representatives of the private sector.

Functions of the Committee

28.(1) The Committee of Commissioners shall have the following functions, to :-

(a) consider the extent of compatibility, by strategic projects, with the priorities of investment, in the strategic fields;

(b) consider the needs, by strategic projects, to infrastructure and basic services, needed by the project, and the extent of availability, or possibility of providing the same;

(c) consider the needs of the project, to manpower and the specialized one, procured from abroad, in accordance with the prevailing laws;

(d) achieve the sector investment plans, by the approved and proposed investment projects;

(e) co-ordinate, between the Ministry, and the Competent Ministries, and the states, in every such thing, as may concern investment projects, especially on the map of investment lands.

(2) The Committee may call any person, or body of competence, upon discussing any such subject, as may fall within the competence of such Committee, and he shall not be entitled to vote.

Functions of federal ministries

29. Federal ministries, having connection with investment, shall have competence, as to the following :-

- (a) specify priorities, and lay down the investment policies, at their ministries;
- (b) prepare sector investment maps;
- (c) approve, on point of principle, the establishment of the project, upon such primary feasibility study, as may be transferred thereto, by the Ministry; provided that the final feasibility study of the project shall be presented to the Ministry ;
- (d) follow-up the execution of the projects concerning the Competent Ministry, and submit periodical reports, as the Minister may require.

State Investment

30. An investment Act in the states shall be promulgated, by a state law, as to the form of Federal Investment Encouragement Act, 1999.

Chapter 6 (Final Provisions)

Investment maps

31. The Ministry shall lay down the national investment map, in accordance with the policies and directives of the National Economic Planning Council; provided that the same shall include particular percentages, of the federal projects, in the states, and submit the same, to the Council of Ministers, for approving the same; provided further that the investment map shall include such sector investment maps, as may be prepared by the federal ministries and ministries of investment in the states.

Settlement of Investment disputes

32.(1) Saving such disputes, as may be governed by the provisions of the agreements set out in sub-section (2), where any legal dispute, relating to investment, arises, the same shall be submitted to conciliation, or arbitration .

(2) The provisions of the Investment of Arab Capitals, in Arab States, Consolidated Agreement, 1980, the Settlement of Investment Disputes, Between Arab States, Agreement, 1974, the Settlement of Investment Disputes, Between States and Citizens of other States, Agreement, 1965, the Economic, Technical and Trade Co-operation, Between States Parties, to the Islamic Conference Organization, General Agreement, 1977 and any such other agreement, in this respect, as the Sudan may be a party thereto, shall apply to every such legal dispute, as may directly arise out of any of such agreements.

Power to make regulations

33. The Council of Ministers , upon the recommendation of the Minister, may make such regulations, as may be necessary, for the implementation of the provisions of this Act. Without prejudice to the generality of the foregoing, such regulations may include the following matters :-

- (a) specification of type and size of such projects, as may be granted preference privileges;

- (b) laying down safeguards for the prevention of overlapping, between federal, state and local investments;
- (c) specification of strategic and non-strategic projects;
- (d) the procedure of applying, for the grant of licence and privileges, and specifying the type and size thereof;
- (e) specifying services fees;
- (f) the safeguards and bases, pertaining to control, and follow- up, of the projects licensed, under the provisions of this Act.