

In the Name of Allah, the Gracious, the Merciful

The Investment (Encouragement) Act. 1999
Amended year 2000

Be it hereby passed, in accordance with the provisions of the Constitution of the Republic of Sudan 1998, with the assent of the president of the Republic, the following Act.

Chapter 1

Preliminary Provisions

Title and Commencement

1 This Act may be cited as “the Investment (Encouragement) Act, 1999,” (Amended 2000) 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 The investment (Encouragement) Act 1996, shall be repealed, provided that all the regulations and orders made and measures taken, thereunder, shall remain in force as if they have been made or taken under the provisions of this Act, until repealed, or amended in accordance with the provisions thereof.

Prevalence of the provisions of this Act

3. The Provisions of this Act shall, in case of any 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 to such extent as may achieve its objects, provided that the same shall not prejudice the privileges and facilities prescribed to the existing projects at the time of commencement hereof.

(2) Notwithstanding the provisions of subsection (1) all privileges pertaining to imports granted to investment projects are to be repealed and the provisions of section 11 of the amended Act shall apply thereto:

(3) Subsection (2) shall not apply to existing projects licensed under special agreement with the Government of Sudan.

* Signed on the 9th Day of Reabie II, 1420 A.H. being the 22nd Day of July 1999.

Interpretation

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

"Rehabilitation" means the rehabilitation or the modernization or expansion of an existing project.

"The Invested fund " means:

- (a) The local exchange, paid by the investor, and used in the establishment, operation, modernization, rehabilitation or expansion of the project;
- (b) The free foreign exchange, through one of the banks, registered with the Bank of Sudan, which is used in the establishment, operation, modernization or expansion of the project;
- (c) The local exchange by which discharge is made, upon the approval of the competent bodies, to meet such obligations, of the investor, as may be due for performance in foreign exchange, where the same is used for establishment, operation, modernization, rehabilitation or expansion of the project;
- (d) The capital in kind, and any other proprietary rights such as mortgages and debt guarantees and all other similar rights, and dividends shares and other documents concerning companies and any sort of other partnership and the machinery equipment apparatuses, material and other requisites and means for transport from abroad or local ones, for the establishment operation, modernization, rehabilitation or expansion of the project.
- (e) The intangible, and intellectual property, including the rights of publication and trade marks and patent and industrial designs which may be 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 he is licensed the same, or the part of the proprietor thereof.
- (f) Profits achieved by the project, where the capital of the project has been complemented or increased thereby or invested in any other project.

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

"Project", means any economic activity, whatever its legal form may be, which is included in to any of the investment fields, set out in this Act, and such project which may be prescribed by the Council of Ministers in accordance with the objects of encouragement of investment provided for by virtue of section 6, and the approval of such project shall take place in accordance with the provisions of this Act

" The ministry " means the Ministry of National Industry and Investment.

"Minster" means the Minister of National Industry and Investment.

"The Minister Concerned" means any of the Federal Ministers.

"The State Minister" means the State Minster to be determined by Council of Minister of the State to be concerned with the investment.

Chapter II

Encouragement of Investment

Objects of Encouragement of Investment

6. This Act aims at encouraging investment in such projects as may achieve the development plans objects and investment initiatives by the Sudanese and non-Sudanese private sector, co-operative, joint and public sector; and without prejudice to the generality of the foregoing, it aims at the encouragement of investment in the projects of any of the fields set out in section 7, and the rehabilitation projects.

Fields of investment

7. This Act encourages investment in the fields of agriculture, animal, industry, energy, mining, transport, communication, tourism, environment, storage, housing, contracting, basic infrastructure, economic services, administrative, consultative and information technology services, education, health, water. cultural and information services and any other fields as may be specified by the Council of Ministers.

Discrimination between projects prohibited

8. (1) For the purposes of this Act, no discrimination shall be made between the invested fund, by reason of the same being local or foreign, or by reason of its being a public, private, co-operative or joint sector.
(2) No discrimination shall be made between similar projects, with respect to granting privileges facilities or guarantees.

Chapter III

Privileges, Facilities and Guarantees.

Branch I

Strategic projects

9. (1) There shall be deemed to be strategic investment, which falls within the following fields namely: -
- (a) Relating to the infrastructure, roads, ports, electricity, dams, communication and telecommunication, energy, transportation, contracting, administrative and consultative services, education, health, tourism services, information technology services and water projects.
 - (b) Relating to the exploitation of subsoil and marine resource.
 - (c) Agricultural, Animal and Industrial production.
 - (d) Across the border of more than one State.

(e) Any other fields as may be specified by the Council of Ministers.

(2) Regulations shall specify the strategic projects provided for under paragraph (l).

Branch 11

Privileges

Exemption of projects from taxes and fees

10. (1) Subject to the provision of section 19, the strategic project specified by the Regulations, after its registration in accordance with the laws organizing the same, shall enjoy the following privileges:

Exemption from business profits taxes for a period not less than ten years which commences, as from the date of the commercial production or practicing the activity, and the Minister may extend the period mentioned in this paragraph as he may deem fit

(2) Exemption from the business profit taxes for non-strategic projects. For a period not exceeding five years which commences as from the date of commercial producing or the practicing of activity, which may be expanded by the Minister.

Exemption of Investment Projects from Fees

11. (1) Subject to the provisions of section 19, strategic and non-strategic projects, specified by the regulations, shall enjoy custom duties privileges as provided for in the tables annexed to this Act.
(2) Notwithstanding the provisions of subsection (l), custom duties privileges for vehicles, saloon cars, pickups and station wagons are to be granted with provisions as specified by the regulations.
(3) With recommendation from the Minister, the Council of Ministers may amend the tables annexed to this Act.

Granting the project the privilege of allotment of land and calculation of depreciation

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

- (a) Allotment of lands necessary for the strategic projects free, and at encouraging price for the non- strategic projects, in co-ordination with the concerned bodies of the lands which have been planned by the competent bodies.
- (b) The privilege of calculating the depreciation of its assests, in accordance with the renewal value, to be prescribed by the Regulations, and according to the operational sessions.
- (c) The considering of any loss which may occur during the period of exemption mentioned in sections (10 and 11) as if it occurred at the last year of such period.

Granting of privilege to state projects

13. The state Minister may grant the state project as may be prescribed by the Regulations, the following privileges:
- (a) Total or partial exemption of taxes and fees, which may be levied by a state law or local order, for a period not exceeding five years, provided that he may, subject to the approval of the State Council of Ministers, expand the same exemption for an other similar period.
 - (b) Any taxes or state fees to be levied on the project later on.
 - (c) Allotment of the necessary land for the project, at an encouraging price, in co-ordination with the concerned bodies.

Granting of federal privileges on the state projects

14. (1) The Minister may on the recommendation of the State Minister, grant the state's project, the privileges provided for under section 11.
- (2) The State Minister as may be delegated by the Minister, may grant the state project the privileges provided for under section 11 according to the conditions and limits deemed to be fit by the Minister.

Prohibition of the levy of taxes or fees on the federal project

15. No state or local council may levy any tax, fees, state or local rates upon any investment project federally licensed, throughout the period of the tax exemption provided for in sections 10 and 11 save in consideration of service of public nature rendered by the state or the local council.

Preferential privileges

16. (1) The Minister, may grant preferential privileges to such projects as may satisfy the following aspects: -
- (a) Direct investment towards the less development areas.
 - (b) Assist in the development of export capabilities of the country.
 - (c) Strive to achieve the integral rural development.
 - (d) To create wide range of jobs.
 - (e) Strive to encourage charitable legacy.
 - (f) Strive to develop scientific and technical research.
 - (g) To reinvest the profits thereof.
- (2) For the purposes of subsection (1) the privileges mean any of the privileges provided for in section 10 and 11 hereof, in relation to their size extent and duration, as may be prescribed by the Regulations.

Branch III

Guarantees

Investment Guarantees

17. (1) The investor shall enjoy the following guarantees:-

(a) Non-nationalization or forfeiture of his project and no-acquisition of the real property whether totally or partially, or his investments for public interest in accordance with the law and for a just compensation.

(b) Non-seizure, expropriation, blocking, forfeiture, custody of the property of the project or imposing sequestration thereon, save by a judicial order.

(c) Re-Transmission of the invested fund, in case of non-execution of the project initially, liquidation or disposal of the same in any of the ways totally or partially, in the currency in which it has been imported, on condition of satisfaction of all the obligations legally due. In case of the non-execution of 'the project initially, the machinery, equipment, apparatus, means of transport and other requisites which have been imported for the project may be re-exported, when all the obligations herein before mentioned are satisfied.

(d) Transmission of the profits and the fund in foreign capital or loans, in the same currency in which the capital or loan have been imported at the time when they became due, when all the obligations legally due from the project are satisfied.

(e) Import the raw material needed by the project and export of the products thereof immediately after registration of the investment project in the records of the importers and exporters.

(2) For the purposes of paragraph (c) of subsection (1), the invested fund of the foreign currency shall be determined in the project, and its elements shall be evaluated by the Minister and registered in the bank of Sudan.

Protection of privileges and guarantees of the projects

18. Not with standing the provisions of any other law, no administrative body, shall refrain from the implementation of the privileges and guarantees granted by virtue of the provisions of this Act.

Chapter IV

Investment Safeguards

Investor, licensed to establish the project

19. (1) Subject to the provisions of section 4, no person shall establish any project in the Sudan, save after obtaining a licence therefore, 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 subsection (1), no license shall be granted to foreign or joint investments by the state save by the assent of the Minister.

Feasibility study of the project to be produced

20. No licence shall be granted to any project, nor shall any privileges, facilities or guarantees, as may be set out in this Act, be granted thereto, save after production of a technical and economic feasibility study of the project.

Form of license and privileges

21. An application for granting the license to any project, and granting any of the privileges or facilities, provided for in this Act, shall be submitted on such prescribed form, as follows: -

(a) The strategic and non-strategic projects to Federal Ministry.

(b) The state projects, whether strategic or non -strategic, to the State Ministry.

Grating of license

22. (1) The Ministry or the state Ministry on receipt of the satisfactory application for granting license shall refer the same to the concerned Federal or State Minister, as the case may be within one week for the initial approval of the establishment of the project.
- (2) The concerned Federal or State Minister, as the case may be shall decide on the initial approval and submit the same to Ministry or the State Ministry as the case may be within seven days of the date of receipt of such application.
- (3) In case of having the initial approval not submitted within the period provided for in subsection (2), the Minister or State Minister shall decide on the application by the expiry of such period.
- (4) In all cases the Minister or the State Minister, as the case may, shall decide on the application for license within a period not exceeding thirty days of the date of receipt of the satisfactory application.
- (5) The applicant for license shall be entitled to submit his grievance, against the act of not deciding on his application in accordance with the provisions of subsection (1) , to the Federal Council of Ministers, or State Council of Ministers as the case may be, to determine his grievance within one month of the date of receipt of the fulfilled grievance.

Delivery of Land allotted to the project

23. The Federal or State competent body shall deliver the land allotted to the project within a maximum period of one month of the date from granting the license.

Conditions for continuous enjoyment of license and privileges

24. (1) No investor shall take any of the following measures, within the period of validity of the license or 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 such measure are namely: -
- (a) Make any amendment, or change in the size of the project, or the object for which the license has been granted, or transfer the project from its place, prescribed in the licence;
 - (b) Use any such equipment, machinery, apparatuses Raw Materials or spare parts as in respect of which privilege has been granted, for any other purposes, other than purpose for which license has been granted.
 - (c) Change the purpose of use of the land allotted to the project, sell, mortgage or lease the same totally or partially.
- (2) Notwithstanding the provisions of subsection (1), the investor may dispose of the existing project without amending the licensed object totally or partially whether by sale, donation, mortgage, lease or partnership according to the provisions of law in force.

Duties of the investor

25. The Investor shall:
- (a) Commence executing the project within a maximum period of Twelve months, as from the date of receiving the land, unless such period has been extended, on the part of the Minister or the State Minister for such period, as he may deem appropriate.
 - (b) Submit to the Minister, the concerned Minister or the State Minister, periodical reports, every six months, during the period of validity of the privileges, on the progress of operation of the execution of the project up to the time of commencement of production or practice of the activity.
 - (c) Keep proper accounts, and keep such records as where on may be entered such assets of the project as may be exempted from customs duties, and such materials as may be imported and so exempted.
 - (d) Submit to the Minister or the Minister concerned or the State Minister annually, during the period of validity of the privileges, a copy of annual accounts of the project, authenticated by a chartered auditor.

Contravention by the investor to The provisions, of this Act

26. (1) The investor shall be deemed to have committed a contravention of the provisions of this Act where he:
- (a) Contravenes the provisions of section 19,24 and 25.

- (b) Delivers false, or misleading information, or uses such unlawful means, as may results in obtaining any benefit, in accordance with the provisions of this Act, for himself or any other person.
 - (c) Suspends the project, without a reasonable cause.
 - (d) Contravenes the laws of the country, in such a way as may threaten the security and safety thereof.
- (2) Without prejudice to any penalty, which may be provided for in any other law, the Minister or the State Minister, as the case may be, in case of commission, by the investor, of any of the contravention provided for in subsection (1), may impose any of the following sanctions as to the size of contravention and circumstances of committing the same, and the extent of such injury, as may affect the national economy:
- (a) Warning him to remove the causes of the contravention where there is some justification therefore, within such period as he may specify.
 - (b) Decrease the period of any privileges as may be granted to the project or the size thereof.
 - (c) Not granting him any of the privileges and guarantees provided for in this Act.
 - (d) Revoking the privileges totally or partially, and the same shall result in binding the investor to refund the value of such material benefit, as he may have reaped from obtaining any previous privileges where earning the benefit has been the result of occurrence of the ground which lead to the issue of the revocation decision.
 - (e) Revoking the license, from the same, the acquisition of the land allotted to him under the provisions of this Act.
- (3) The investor in respect of whom a decision has been issued under the provisions of subsection (2), may submit his grievance to the Federal Council of Ministers or State Council of Ministers as the case may be, within one month of the date of issue of the decision. The decision in this respect shall be final, provided that this provision shall not preclude the investor from access to courts.

Chapter IV

Investment Organs

Constitution and function of authorized Person

Committee constitution of authorized person committee

27. The Minister may constitute a committee from a chairman and a number of members to represent the concerned bodies of investment related nature, as of the Ministries and government units concerned, provided that the degree of each shall not be less than the head of the unit or his deputy, who shall be officially and exclusively authorized from the body which he represented, and it includes representatives of the private sector.

Functions of the Committee

28. (1) The Committee of the Authorized person shall have the following functions:-

- (a) To study the conformity of the project to the investment priorities in the strategic fields.
- (b) To view the needs of the strategic projects as of the infrastructure and the basic service needed by the project and the availability or the possibility of availability thereof.
- (c) To view the need of the project as the manpower, of special qualification, which may be contracted with from abroad in accordance with the laws in force.
- (d) To realize the sectoral investment plans by the approved and proposed investment projects.
- (e) To co-ordinate between the Ministry and the concerned Ministries and the states in relation to the investment project and especially in relation to the map of the investment lands.

(2) The Committee may invite any person or body of competence when discussing any subject within the jurisdiction of such body in the investment fields, and he shall not have the right to vote.

Functions of the Federal Ministries

29. Such Federal Ministries as may have connection with investment shall be competent to exercise the following functions: -

- (a) To specify priorities and lay down investment policies thereof
- (b) Prepare such investment sectoral maps.
- (c) To assent initially to the establishment of the project on the initial feasibility study to the Ministry, provided that the final feasibility study shall be submitted to the ministry.
- (d) To follow up the execution of private projects with the Ministry concerned, and submit periodical reports as the minister may request,

The state investment

30. There shall be made by a state Act and investment state Act to follow the formula of the federal investment encouragement Act 1999.

Chapter VI
Final provisions
Investment Maps

31. The Ministry shall prepare the national investment map in accordance with the policies and guidelines of the National Council for Economic Planning provided that the same shall provide for percentage of the national projects in the state, and submit the same for approval by the Council of Ministers. Provided that the investment map shall include the sectoral investment maps which may be prepared by the Federal Ministries and the state investment ministries.

Investment Dispute Settlement

32. (1) Save as such disputes, as may be governed by the provisions of agreement set in subsection (2), where a legal dispute to investment arises the same shall be referred to reconciliation or arbitration.
- (2) The provision of the Investment of Arabic Capitals in Arab State Unified Agreement 1980, the Settlement Investment disputes between the Arab State Host of Arab Investment and between citizens of Arab State Agreement 1974, the Settlement of Investment disputes between the state and the citizens of other states Agreement 1965, the Economic. Technical and Commercial Co-operation between the State parties to the Islamic conference organization Agreement 1977 and any other agreement in this respect, as the Sudan may be a party thereto, shall apply to any legal dispute as directly arise from 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 this Act, and without prejudice to the generality of the foregoing such Regulations may include the following matters:-
- (a) Specification of the type and size of such projects, which may be granted preference privileges.
 - (b) Laying down safeguards for prevention of overlapping between federal, state and local investments.
 - (c) Specification of the strategic and Non- strategic projects.
 - (d) The procedure of application for granting the license privileges, and specifying the type and size thereof.
 - (e) Specifying the service fees.
 - (f) Safeguards and basis concerning control and follow- up of such projects as may be licensed under the provisions of this Act.