

LAWS OF THE NEW SUDAN

THE NEW SUDAN PUBLIC CORPORATION

Act, 2003

(PROVISIONAL ORDER)
THE NEW SUDAN PUBLIC CORPORATION
ACT, 2003

CHAPTER ONE.

Preliminary

1. Title and Commencement:-

This Act may be cited as “The New Sudan Public Corporation Act, 2003, and shall come into effect on the date of signature.

2. Repeal and Saving:-

The New Sudan Public Corporation (Provisional Order) 2000 is hereby repealed; provided that all orders, acts and regulations issued or made under the repealed provisional order shall remain in force till repealed or amended in accordance with the provisions of this Act.

3. Definitions:-

In this Act, unless the context otherwise requires the following words and expression shall carry the meanings assigned to them:-

“Corporation” means the New Sudan Public Corporation established under section 4 of this Act.

“SPLM” means the Sudan People’s Liberation Movement.

“NLC” means the National Liberation Council of the New Sudan.

“CANS” means the Civil Authority of the New Sudan.

“Commission for Economy” means the Commission for Economic Production, Human Resource Development and Physical Infrastructure.

“Commissioner” means the Commissioner for Finance and Economic Planning.

“Auditor General” means the Auditor General of the New Sudan or any other person whom he may authorise.

“Board” means the Board of Directors set up in accordance with the provisions of this Act.

“LC” means the leadership Council of SPLM and CANS.

“Committee” means a Committee of the Board set up in accordance with the provisions of this Act.

“Chairman” means the chairman of SPLM, and CANS.

“Subsidiary body” means a company or any enterprise operating under the corporation.

“General Manager” means the Chief Executive of the Corporation.

“Manager” means any person in charge of an Executive position in the Corporation or subsidiary.

CHAPTER TWO.

Establishment and Powers of the Corporation.

4. There shall be established a corporation to be known as “The New Sudan Public Corporation”, here in after referred to as “the Corporation” and abbreviated “NSPC”.
5. The Head Office of the Corporation shall be in Yei or any other place deemed appropriate inside the New Sudan.
6. The Corporation shall be an autonomous body corporate, with perpetual succession and a common seal and shall, subject to the provisions of this Act, be capable in its corporate name of:-
 - (i) suing and being sued.
 - (ii) taking, purchasing or otherwise acquiring, holding, changing and disposing of property, movable or immovable.
 - (iii) borrowing and lending money.
 - (iv) doing or performing all such other things or acts for the proper performance of it’s functions under this Act, which may lawfully be done or performed by a body corporate.
7. All the New Sudan, public business parastatal bodies being companies or enterprises operating in or outside the New Sudan shall be subsidiaries of the Corporation and all their assets shall accrue to the Corporation.
8. The Articles and Memorandums of Association of all the subsidiaries of the Corporation shall be amended in accordance with the provisions of this Act.
9. The Corporation shall re-organise and restructure all its subsidiaries. It may establish more subsidiary bodies as it deems appropriate.

10. The Corporation and its subsidiaries shall be the only institution of the CANS to conduct business and no any public institution shall conduct business without the approval of the LC or according to the Law.
11. The NSPC shall be answerable to the Chairman through the Board.
12. The Corporation shall engage and employ members of the Executive including the General Manager on such terms and conditions of service as the Board, in consultation with the Public Service Commission, may determine.
13. The power of the Corporation to borrow money in the New Sudan or elsewhere, shall be exercised only with the approval of the Board in consultation with the Commissioner.
14. The Corporation may with the approval of the Board in consultation with the Commissioner establish pensions, gratuity, provident or any other funds for the corporation's employees and their dependants.

CHAPTER THREE

Organs of the Corporation.

15. **The Organs of the Corporation shall be:-**
 - (i) Board of Directors, here-in-after referred to as "the Board", and
 - (ii) The Executive Body, here in after referred to as "The Executive".
16. **Board of Directors:-**

The Board shall be composed of the chairman of the Commission for Economy as its chairman and membership of the Commissioners of the Commission. The General Manager of the Corporation, shall be the Secretary and an ex-officio member of the Board.
17. **Meetings of the Board:-**
 - (i) The Board shall meet at least three times a year in addition to any other extra-ordinary meetings.

- (ii) The meetings of the Board shall be held in the head office of the Corporation or as the Board may decide. In the absence of such a decision, the chairman of the Board shall, in consultation with the General Manager, call the meeting on a date and place to be determined by him.
- (iii) Unless the Board otherwise decides, at least fourteen days written notice of the meeting of the Board, shall be served upon every member of the Board.
- (iv) The quorum for the conduct of business of the Board shall be two thirds of the membership of the Board.
- (v) The chairman of the Board shall preside at all the meetings of the Board and in his absence, the Commissioner for Finance and Economic Planning acts.
- (vi) Decisions on matters before the Board shall be passed by majority decision of the members present and voting. In case of a tie, the chair shall have a casting vote.
- (vii) No Director shall vote at a meeting of the Board or of a committee of the Board on any resolution concerning a matter in which he has direct or indirect interest, which conflicts or may conflict with the interest of the Corporation.

18. Powers of the Board:-

Subject to the provisions of this Act and any directives that may be given by the Chairman or any other special resolution:-

- (i) The business of the Corporation shall be directed, supervised and formulated by the Board and may exercise all the powers of the Corporation.
- (ii) The Board shall direct the promotion of the mission, policy formulation and general guidance of the affairs of the Corporation.
- (iii) The Board shall approve employment, supervise and discipline the staff of the Executive.
- (iv) The Board shall assist in the promotion of the Corporation to the business community to get funds for the Corporation.
- (v) The Board may from time to time, recommend to the Chairman of the SPLM/CAN, the appointment of the General Manager of the Corporation for such period and on such terms as deemed fit and subject to the terms of any agreement entered into in any particular case which may revoke such appointment.

19. Borrowing Power:-

The Board may exercise all the powers of the NSPC to borrow money and to mortgage or charge its undertaking, provided that the amount shall not be borrowed without the prior approval of the LC. The loan shall not exceed the nominal amount of the funds of the Corporation.

20. Delegation of Powers:-

- (i) The Board may delegate to the General Manager any of the powers exercisable by it, upon such terms and conditions and with in such restrictions as the Board may think fit and either collaterally with or to the exclusion of its powers. The Board may from time to time revoke, withdraw, alter or vary all or any of such powers.
- (ii) The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Corporation for such purposes and on such conditions as it may determine.
- (iii) The Board may delegate any of its powers to any committee consisting of two or more Directors. It may also delegate to the General Manager or any Executive office bearer, such powers as the Board may think necessary to be exercised by them. Any such delegation may be made, subject to any conditions the Board may impose, either collaterally or to the exclusion of its powers and may be revoked or altered subject to any such conditions. The proceedings of any committee shall be governed by the powers regulating the powers of the Board, so far as they are capable of application.
- (iv) No amendment to this Act and no directives shall invalidate any prior act of the Board, which would have been valid, if the amendment or directive had not been made or given.
- (v) No matter or thing (civil or criminal) done by the Board or any officer or employee of the Board or committee or any person so delegated by the Board in accordance with its powers under this Act, shall, if the matter or thing is done in good faith, for exercising the powers, functions and duties of the Board, shall make the member, officer, employee or any person acting by its directives, personally liable for any claim or demand whatsoever.

CHAPTER FOUR.

The Executive Body.

21. The Corporation shall be managed by the Executive body and shall be constituted as follows:-

- (i) The General Manager:-
Who shall:-
 - a) be appointed by the Chairman on the recommendation of the Board.
 - b) be the Secretary of the Board as an ex-officio member.
 - c) be the Chief Executive of the Corporation and shall be responsible for its planning, management and administration.
 - d) appoint the managers of the subsidiaries and other members of the executive in consultation with the Board.
 - e) appoint the support staff.
- (ii) Deputy General Manager:-
shall assist the General Manager in the performance of his functions and duties and acts in his absence.
- (iii) Administrative Manager:-
shall be in charge of administration of the Corporation.
- (iv) Financial Manager:-
shall be in charge of finance and all the assets of the Corporation.
- (v) Managers of the subsidiaries (companies and enterprises):-
they shall be in charge of the management of the subsidiaries and directly answerable to the General Manager.
- (vi) Any other executive positions, that the Board may create on the recommendation of the General Manager.

22. Duties and Meetings of the Executive Body:-

- (i) The Executive shall be responsible for the re organization, restructuring and management of all the Corporation's activities, and for this purpose, shall give directives to the offices bearers as to the manner in which they shall perform their functions with in the law. The Executive shall have the power to appoint such bodies as it may deem necessary to report on the progress or regress made by the Corporation's bodies.
- (ii) All the monies disbursed on behalf of the Corporation shall be approved by the Executive.

- (iii) The Executive shall receive policy guidance from the Board.
- (iv) The Executive shall be responsible for budget preparation, resource mobilization, implementation monitoring and evaluation of the subsidiary bodies under the Corporation.
- (v) The staff of the Executive shall be professionals of good personal integrity and experience.
- (vi) The quorum for the meetings of the Executive shall be half plus one of the membership.
- (vii) The Executive shall in its meetings follow the same proceedings as of the Board.
- (viii) The Executive shall meet whenever called by the General Manager.

23. The Executive Reports:-

- (i) The Executive shall prepare quarterly and annual progress and financial reports for each of the meetings of the Board. The reports shall:-
 - a) contain a fair view of the development of the business of the Corporation during the financial year and its position at its end.
 - b) state the names of the persons who at any time, during the financial year, were executives of the Corporation and the principal activities of the Corporation in the course of the year and any significant changes in those activities.
- (ii) Failure to comply with the aforesaid provisions, anybody who was an executive of the Corporation immediately of the period for laying and delivering accounts and the periodical and annual reports, shall be disciplined by the Board.
- (iii) The Executive reports shall be approved by the Board and signed by its chairman. The chairman of the Board shall thereafter present the reports together with the auditors reports to the LC for perusal and ratification.

24. Funds and Assets of the Corporation:-

- (i) The Board shall be responsible for the proper management of the affairs of the Corporation and shall be accountable to the LC for the monies, the financial business and the management of the Corporation.
- (ii) The LC may summon the General Manager of the Corporation, to answer, on behalf of the Board, any questions arising from the report.
- (iii) Where there is surplus money after making the necessary provisions for the running of the Corporation, the surplus shall be transferred to the accounts of the Secretariat of Finance and Economic Planning.

- (iv) The funds and assets of the Corporation shall be solely for the promotion of the objectives of the Corporation and the CANS.
- (v) No parts of the funds or assets of the Corporation shall be paid or transferred to the members of the Board or the Executive, save payments in good faith on reasonable and proper remuneration to any of the Board or Executive members or employee of the Corporation, in return for services actually rendered to the Corporation.
- (vi) The chairman and members of the Board, other than the General Manager, the Executive and other employees of the Corporation, in receipt of salaries, shall be paid out of the funds of the Corporation, such sitting allowances or other remunerations, as the Board may approve with in the scales of remunerations specified from time to time by the LC.
- (vii) The Board may, within the scales specified by the LC, refund traveling and any other expenses incurred by the chairman and members of the Board in the performance of their duties.
- (viii) No member of the Board shall be appointed to any Executive office or any other paid office of the Corporation.

25. Indemnity:-

Without prejudice to the provisions of this Act, and indemnity for which the Board may be entitled, any director, officer or auditor, shall be indemnified against the funds of the Corporation for any liability incurred by him in defending any proceedings before any court and in which verdict is in his favour or granted relief by the court from liability for negligence, default, breach of duty, breach of contract or trust in respect of the affairs of the Corporation.

26. Accounts:-

- (i) The Corporation shall have a single bank account in a bank to be decided by the Board. All the remittances of the Corporation's subsidiaries shall be made into this account.
- (ii) The accounts shall be run by the Executive of the Corporation and the signatories shall be the General Manager, Administrative Manager and the Financial Manager or as the Board may direct.
- (iii) The Corporation shall cause proper books of accounts to be opened and kept in the Corporation's head office and subsidiaries in respect of:-
 - a) the sums of money received and spent by the head office or subsidiary and the matters in respect of which receipt and expenditure take place.

- b) sales and purchases of goods by the head office or subsidiary.
- c) the assets and liabilities of the corporation or subsidiary.
- (iv) Proper books of accounts shall not be deemed to be kept if they are not kept as necessary to give true and fair view of the state of the Corporation or subsidiary affairs and to explain its transactions.
- (v) The books of accounts shall be kept in the head office of the Corporation or subsidiary and shall always be open for inspection by the Board and officers of the Corporation.
- (vi) The Board shall determine, to what extent and at what time and place, under what conditions and regulations the accounts and books of accounts of the Corporation or any of its subsidiaries may be open for inspection.
- (vii) The Board shall, in accordance with the powers conferred upon it by this Act, cause to be prepared and laid before the LC meeting such accounts or books of accounts as are necessary.
- (viii) A copy of every balance sheet (including every document required by law to be annexed there to) shall be laid before the LC meeting together with a copy of the auditors and executive reports.
- (ix) Each subsidiary of the Corporation shall prepare and submit its monthly and annual reports to the head office of the Corporation. The Executive shall compile these reports, prepare and submit its quarterly and annual reports to the Board.
- (x) The Financial Year of the Corporation begins on the 1st of January and ends on 31st December or such other date as the Board may determine.

27. Audit:-

- (i) The accounts of the Corporation and its subsidiaries shall be audited by the Auditor General.
- (ii) The accounts of the Corporation shall be audited within two months from the end of the financial year or as the Board may decide.

28. Duties of the Auditors:-

The auditors in the preparation of their report, shall carry out such investigation as will enable them form an opinion as to:-

- (i) Whether proper accounting records have been kept by the Corporation and proper receipts or vouchers or any other necessary financial forms or documents have been made available to them.

- (ii) Whether the Corporation's accounts are in agreement with the accounting records as per case receipts; the auditors shall state this fact in their report.
- (iii) If the auditors fail to obtain all the informations and explanations, which to the best of their knowledge and belief are necessary for the purposes of audit; they shall clearly state that in their report.

29. Auditors Report:-

- (i) The auditors shall make their report to the General Manager with copies to the Manager's of the subsidiaries concerned. The report shall be discussed by the Executive after which the General Manager shall lay it before the Board.
- (ii) The auditors report shall state whether, in the auditor's opinion, the annual accounts have been properly prepared and kept in accordance with the accounting practices, and in particular, whether a fair view is given:-
 - a) in case of an individual balance sheet of the head office or particular subsidiary or of the state of the Corporation or subsidiary at the end of the financial year.
 - b) whether the information given in the executive report for the financial year for which the annual accounts report is prepared, is consistent with those accounts, and if they are of opinion that it is not, then they shall state that fact in their report.
- (iii) The auditors report shall state the names of the auditors and shall be signed by them.

CHAPTER FIVE

Miscellaneous Provisions.

- 30.** The Corporation shall not be wound up except by a resolution of the NLC.
- 31.** The Board may, after consultation with the General Manager, make such regulations as may be necessary for the proper conduct of business of the Corporation.

Given Under my hand this day of year 2003 A.D.

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Dr. John Garang de Mabior

Chairman

SPLM / CANS