

LAWS OF THE NEW SUDAN

THE INVESTMENT ACT, 2004

Provisional Order

**LAWS OF THE NEW SUDAN
THE INVESTMENT ACT, 2004**

TABLE OF CONTENTS

<i>Section</i>	<i>Title</i>	<i>Page</i>
CHAPTER ONE – PRELIMINARY PROVISIONS		
1.	Title and Commencement.	3
2.	Savings	3
3.	Definitions	3
4.	Application.	4
CHAPTER TWO – ENCOURAGEMENT OF INVESTMENT		
5.	Fields of Investment.	4
6.	Objects of Investment.	5
7.	Non Discrimination.	5
CHAPTER THREE – PRIVILEGES AND FACILITATIONS.		
8.	Grant of Privileges and Facilitations.	6
9.	Exemption from Business Profit Tax.	6
10.	Exemption from Duties.	6
11.	Allotment of Land.	7
12.	Local Duties	7
13.	Electricity and Transport.	7
14.	Project Products.	7
15.	Preferential Treatment.	7
16.	Feasibility Study.	7
17.	Licence for the Project.	8
18.	Terms and Procedures for a Licence.	8
19.	Guarantee Against Nationalization or Confiscation.	8
20.	Transfer of Profits of Invested Capital.	9
CHAPTER FOUR – RULES OF INVESTMENT		
21.	Loans from Abroad	9
22.	Fixing and Registration of Foreign Capital.	9
23.	Cancellation of Licences, Privileges, Preferentials and Guarantees.	9
24.	Contraventions.	10

CHAPTER FIVE – THE INVESTMENT BOARD

25.	Investment Board	10
26.	Functions of the Secretary General	10
27.	Functions of the Technical Team	11
28.	Composition of the Technical Team	12
29.	The National Investment Committee.	12
30.	Functions of the National Investment Committee	13

CHAPTER SIX – MISCELLANEOUS PROVISIONS

31.	Settlement of Disputes.	13
32.	Regulations.	13

**PROVISIONAL ORDER
LAWS OF THE NEW SUDAN
THE INVESTMENT ACT, 2004**

An Act to provide for the establishment and encouragement of investment and any other issues related to or matters there in.

**CHAPTER ONE
PRELIMINARY PROVISIONS**

Section 1. Title and Commencement.

This Provisional Order may be cited as “The Investment Act, 2004” and shall come into effect on the date of signature.

Section 2. Saving.

Notwithstanding the provisions of this Act, all the licences, privileges, facilitations, preferential treatments or guarantees in force, issued or granted under any agreement in the New Sudan shall be valid and operational and shall be deemed to have been granted under this Act, till they are repealed or amended in accordance with the Provisions of this Act.

Section 3. Definitions.

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

“The Project” means an enterprise, utility or any economic activity falling within the allowed investment areas in accordance with the provisions of this Act;

“National Capital” means the capital owned by a New Sudan National investor, which is employed at the commencement of investment in the project. It consists of movable and immovable assets cash or capitalised profits of the project made with the consent of the National Investment Committee;

“Foreign Capital” means:-

- a) The foreign currency transferred to the New Sudan, at the exchange rate current at the time of transfer through a bank operational in the New Sudan for utilization in execution of a project.
- b) Imported machinery, equipment and means of transport financed from abroad and necessary for the execution of the project and compatible with the technological developments and specifications as prescribed by the National Investment Committee.
- c) The foreign currency utilized on preliminary and feasibility studies and foundation undertaken by the investor within the limits approved by the National Investment Committee.

- d) The profits realised by the project, if capitalised or invested in another project with the consent of the National Investment Committee, in accordance with the provisions of this Act.
- e) Intangible assets i.e. patents, trade marks, technical experience... etc. registered by the foreign investor for utilization in the project.

“National Investment Committee” means the Committee for investment established under Section 29 of this Act;

“The Commissioner” means the Commissioner for Finance and Economic Planning;

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

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

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

“Chairman” means the Chairman of SPLM and CANS.

Section 4. Application.

- 1) Subject to the provisions of section 2, the provisions of this Act shall apply to all the investment projects in the New Sudan.
- 2) The Commissioner may on the recommendation of the Commissioner for Industry and Mining and approval of the National Investment Committee, grant to the leaseholders for mines and quarries, the privileges and facilities set forth in this Act.

CHAPTER TWO ENCOURAGEMENT OF INVESTMENT

Section 5 Fields of Investment.

This Act is targeting investment and encouragement of projects:-

- 1) In agricultural, animal, mining, industrial, transport, tourism, storage and housing fields and any other economic field that the National Investment Committee may prescribe.
- 2) Initiated by the public, co-operative, mixed, national, private, and foreign sectors.

Section 6. Objects of Investment.

The objects of this Act in general are to promote investment in projects aimed at the achievement of development plans of the New Sudan, and in particular to encourage investment in projects which:-

- 1) Effectively contribute towards the increase of national income, widen the national economy base and strengthen its activity; or
- 2) Contribute towards the removal of bottlenecks hindering development; or
- 3) Avail services which contribute towards the consolidation of socio-economic development; or
- 4) Depend in production, on local materials or whose establishment is for production of such materials; or
- 5) Assist in the realization of self sufficiency and creation of surplus for export; or
- 6) Assist effectively in the consolidation of balance of payment; or
- 7) Avail employment, directly or indirectly for the nationals; or
- 8) Have strategic importance; or
- 9) Contribute towards the realization of economic co-operation or integration with the neighbouring and African countries; or
- 10) Contribute or geared towards poverty eradication and or environmental protection; or
- 11) Depend in production on sustainable utilization of natural resources.

Section 7. Non Discrimination.

- (1) There shall be no discrimination between the foreign and national projects in the grant of privileges, preferential treatments and facilities under this Act.
- (2) Without prejudice to the provisions of subsection (1) above, the minimum capital required for the registration of any company and issuance of licence there in shall be as follows:-
 - (i) National capital US \$ 100,000 or its equivalent in local currency.
 - (ii) Foreign Capital US \$ 0,500,000

CHAPTER THREE PRIVILEGES AND FACILITATIONS

Section 8. Grant of Privileges and Facilitations.

- 1) Without prejudice to the provisions of any other Law, and subject to the provisions of this Act, the Commissioner may, after consultation with the Commissioner concerned and consent of the National Investment Committee grant all or any of the privileges and facilitations to any project if he/she is satisfied that the project will achieve any of the objects under section 6 above or give it a distinctive economic value.
- 2) The type, extent and period of privileges and facilitations shall be determined in accordance with the level of achievement of the provisions of section 6 hereof and the policies and priorities determined by the National Investment Committee.

Section 9. Exemption from Business Profit Tax.

- 1) The Commissioner may, subject to the provisions of sections 5 and 8 (1) above, exempt the project wholly or partly from business profit tax for a maximum period of five years with effect from the date of commencement of production. The period of exemption shall be in accordance with the importance of the project to the national economy and the size of investment therein.
- 2) Without prejudice to the provisions of subsection (1) above, the Commissioner, may subject to the provisions of this Act, extend the period of exemption to a maximum period of five years in case of integrated projects which include basic structures of production such as roads and other essential services or with respect to large investment projects.
- 3) A project shall be granted exemption for its own benefit and its importance to the national economy. The benefit shall not, during the period of exemption, be returned or transferred to another country.

Section 10. Exemption from Duties.

- 1) The Commissioner may in exercise of his/her powers under section 8 above, exempt a project wholly or partly from the following duties:-
 - (i) customs duties relating to machines, equipments, apparatus and imported spare parts necessary for the project.
 - (ii) imported raw, and or intermediary materials necessary for the project and which cannot be found locally in the required qualities and quantities.
 - (iii) import duties on finished or semi processed goods arising out of the project.
 - (iv) any other duties or taxes imposed on the project.
- 2) The Commissioner may also exempt the project wholly or partly from excise duties imposed on materials or commodities locally produced and which are necessary for the project.

Section 11. Allotment of Land.

Without prejudice to the provisions of any other Law, the Commissioner may after consultation with any other concerned authorities allot the land necessary for the establishment of the project. He/she may reduce the leasehold price or order that such price be paid in instalments subject to such reasonable terms as he/she may prescribe.

Section 12. Local Duties.

Notwithstanding the provisions of any other Law, local duties shall not be imposed on any project exempted under section 9 or 10 hereof, with in the period of exemption, save with the written consent of the Commissioner.

Section 13. Electricity and Transport.

The Commissioner may, subject to the provisions of section 8, and after consultation with the authorities concerned grant to the project, any of the following privileges:-

- 1) Reduction of the cost of public electricity used for the purposes of the project.
- 2) Reduction of public transport fares imposed on the traffic of the imports and products of the project.

Section 14. Project Products.

The Commissioner may under special circumstances and on the approval of the National Investment Committee protect the project products by directing the authorities concerned to:-

- 1) Raise the customs duties on imported commodities which compete with or act as substitutes to the products of the project during the exemption period, or for a limited period, as the case may be; or
- 2) Restrict importation of such competitive or substitute products during the exemption period or for a limited period, as the case may be.

Section 15. Preferential Treatment.

The Commissioner may subject to the provisions of section 8 of this Act, grant to a project established in any region, reasonable preferential treatments for achievement of justice in the allocation of development programmes to the regions and specially to the less developed regions.

Section 16. Feasibility Study.

Privileges, facilitations and preferential treatments shall be granted after a technical economic feasibility study for the project has been submitted provided that such privileges, facilitations or preferential treatment may be granted provisionally on the submission of a preliminary feasibility study. The study shall include environmental and social impacts.

Section 17. Licence for the Project.

An investor shall not apply for a licence in accordance with the provisions of this Act, except after registration in accordance with the provisions of the Companies Act 2003.

Section 18. Terms and Procedures for a Licence.

- 1) Application for a licence for the or grant of any privileges, facilitations, preferential treatments or guarantees, shall be made on the form prescribed by the regulations made under this Act.
- 2) Alteration or amendment in the size of the project or the purpose for which the licence was granted; and or transfer of the project form its prescribed place shall not be made save with the written consent of the Commissioner.
- 3) Transfer of ownership, leasehold of the whole or any part of the project shall not be made without the written consent of the Commissioner.
- 4) The machines, equipments, materials or spare parts in respect of which privileges, facilitations and preferential treatments were granted, shall not be used for any purpose other than the purpose for which the licence was granted.
- 5) The land allotted for the project, in accordance with the provisions of this Act, shall not be used for any other purpose except with the written consent of the Commissioner after consultation with the National Investment Committee.
- 6) The management of the project shall every year present a copy of the annual accounts of the project, signed by a certified accountant, to the Secretary General.
- 7) The project management shall every year after commencement of production, submit a progress report to the Secretary General. The report shall cover execution operations and project productivity.
- 8) The project shall not be liquidated with in five years from the commencement of production.

Section 19. Guarantees Against Nationalization or Confiscation.

Any capital invested in the New Sudan shall enjoy the following guarantees:-

- 1) It shall not be nationalized except for public interest according to the Law; and in such case the following procedures shall apply:-
 - (i) the investor shall be paid, after evaluation of his property, a just compensation, at the price current at the time of nationalization.
 - (ii) the evaluation shall be accomplished with in six months from the date of the order of nationalization.

- (iii) payment and transfer of compensation shall be in yearly instalments within a period of five years in the same currency of the capital or any other currency agreed upon.
- 2) It shall not be confiscated save with the order of a competent court.

Section 20. Transfer of Profits of Invested Capital.

- 1) All the profits arising out of the foreign capital invested in the project, and all the interests arising out of any loans approved in accordance with section 21 of this Act, and after payment of all the taxes, duties, dues and any other obligations due to the CANS, may be transferred outside the New Sudan in the currency in which the capital or loan was imported or any other currency agreed upon.
- 2) If the project is liquidated, sold or its ownership is wholly or partially transferred, the capital invested in the project, after payment of all the taxes or fulfilment of all the duties and obligations, may be transferred outside the New Sudan in the currency in which such capital was imported or in any other currency agreed upon.

**CHAPTER FOUR
RULES OF INVESTMENT**

Section 21. Loans from Abroad.

- 1) The project may borrow money from any foreign body on such reasonable terms as may be agreed by the Commissioner.
- 2) Foreign investors shall not borrow money from banks and financial institutions operating in the New Sudan save with the written consent of the National Investment Committee.

Section 22. Fixing and Registration of Foreign Capital.

Foreign capital invested in the project, shall be fixed and evaluated with the written consent of the National Investment Committee and registered with the Central Bank of New Sudan.

Section 23. Cancellation of Licences, Privileges, Preferentials and Guarantees.

- 1) The Commissioner may subject to the provisions of section 8 above, cancel any licence, privilege, preferential treatment or guarantee, in any of the following cases:-
 - (i) if the investor failed to establish the project within the period specified in the licence or any extension thereto.
 - (ii) if the investor contravened any of the terms according to which any privilege or licence was granted.
 - (iii) if the investor had provided false information or used unlawful means by which he obtained a benefit under this Act.
 - (iv) if the project stopped without a reasonable cause.

- (v) if the investor contravened the Law to the extent that it may threaten the security and safety of the New Sudan.
- 2) If the privileges or facilitations are cancelled, then the investor shall retribute any pecuniary benefit obtained as a result of conferment of such privileges and or facilitations, provided that such benefit is attributable to the cause of cancellation.
- 3) The investor against whom an order was made under subsection (1) above, may file an application with the National Investment Committee for review of such order and the decision of the Committee shall be final.

Section 24. Contraventions.

- 1) Whoever contravenes the provisions of section 17 of this Act, shall on conviction be punished with a fine not exceeding one million pounds.
- 2) Whoever contravenes the provisions of section 18 of this Act, the contravention shall be compounded by an order prescribed by the Commissioner, which shall not exceed one million pounds, in assessment, regard shall be had to the graveness of the contravention and the extent of the unlawful enrichment by the owner of the project. Any person against whom a compounding order is issued may apply to the National Investment Committee for review of such order and the decision of the Committee shall be final.

**CHAPTER FIVE
THE INVESTMENT BOARD**

Section 25. Investment Board.

- 1) There shall be established a Board to be known as “The Investment Board”. The Board shall be subject to the administrative and financial supervision of the Commissioner.
- 2) The Investment Board shall consist of:-
 - (i) the Secretary General.
 - (ii) the Technical Team which shall consist of full time specialists to be recruited from all the technical departments and scientific specializations concerned with investment and its encouragement and of a limited administrative body, and shall exercise the functions set forth in Section 27 of this Act.

Section 26. Functions of the Secretary General.

- 1) The Secretary General shall undertake the preparatory work which shall consist of technical studies prepared by the Technical Team and recommendations there in and any other papers or materials. He /she shall submit the same to the National Investment Committee or the Commissioner, as the case may be, for the exercise of powers conferred by this Act.

- 2) The Secretary General shall in collaboration with the relevant CANS institutions, recommend to the National Investment Committee or to the Commissioner anything under this Act, for decision or consent, provided that the Technical team is not competent to consider or make recommendation with respect thereto.
- 3) The Secretary General shall submit to the National Investment Committee or to the Commissioner, as the case may be, any studies or recommendations made by him/her or by the Technical Team on any application of an investor within two months from the date of receipt of a complete application.
- 4) The Secretary General shall undertake all the preparatory works for the meetings of the Technical Committee and shall make ready all the materials and keep its records.
- 5) The Secretary General shall submit the recommendations of the Technical Team to the National Investment Committee or the Commissioner as the case may be.
- 6) The Secretary General shall supervise the technicians and all the other employees of the Investment Board and shall regulate its business there in.
- 7) The Secretary General shall be appointed by the Chairman of the Commission for Economy after consultation with the National Investment Committee.

Section 27. Functions of the Technical Team.

The functions of the Technical Team shall be to:-

- 1) determine the abilities of investment, the need thereof, its rules and any information relating thereto, and submit the same to and propagate among investors and give advice to them.
- 2) consider applications for licences, feasibility studies and any other applications submitted by the investors, and to make the necessary studies and enquiries about them so as to help the investors and enable the authorities concerned to make a recommendation or decision with respect thereto.
- 3) have contacts and co-operate with all the institutions concerned with the follow up of investment and control of execution of projects so as to help investors and enable the authorities concerned to exercise their functions.
- 4) seek assistance from specialists, researchers or public and private institutions in the exercise of its functions in accordance with the provisions of the preceding subsections.
- 5) consider and make recommendations to the Commissioner with respect to applications for grant of licences for the projects and evaluate the feasibility studies relating there to.
- 6) consider and make recommendations to the Commissioner with respect to applications for grant of privileges, facilitations, preferential treatments or projects.
- 7) to consider and make recommendations to the Commissioner with respect to applications for increase of capital of any project out of profits.

- 8) make recommendations to the Commissioner with respect to compounding of offences it deems necessary to be imposed in accordance with the provisions of section 24(2) of this Act.
- 9) consider and make recommendations to the Commissioner with respect to cancellation of any privileges, facilitations, preferential treatments or licences in accordance with the provisions of section 23 there of.
- 10) any other functions and duties that may be confined upon it by the Regulations, the National Investment Committee or the Commissioner.

Section 28. Composition of the Technical Team.

- 1) The composition of the Technical Team shall be as follows:-
 - (i) Secretary General - Chairperson.
 - (ii) Five experts representing bodies directly concerned with investment - members.
- 2) Appointment to the Technical Team shall be made by the Chairman of the Commission for Economy after consultation with the Commissioner and authorities concerned.
- 3) Members of the Technical Team shall not depute any person to attend its meeting without the prior consent of the Chairperson.
- 4) The members shall disclose any interest or benefits related to any matter which is the subject of discussion by the Technical Team and they shall not participate in the deliberations relating to that matter and shall have no right to vote.
- 5) The Secretary General may invite any person to attend any meeting of the Technical Team whenever he/she deems it necessary provided that such person shall have no right to vote.
- 6) Decisions of the Technical Team shall be passed by simple majority of the members present and voting.
- 7) The quorum for the meetings of the team shall be four members.

Section 29. The National Investment Committee.

- 1) There shall be established a Committee to be known as “The National Investment Committee”,
- 2) The National Investment Committee shall be constituted by the Chairman of any number of the Leadership Council members he may reconstitute it as and when he deems it appropriate.
- 3) The National Investment Committee shall be chaired by the Chairman of the Commission for Economy.

Section 30. Functions of the National Investment Committee.

The functions of the National Investment Committee shall be to:-

- 1) work for the promotion and encouragement of investment in the New Sudan.
- 2) frame the general policy, for promotion and encouragement of investment on the light of the objects set forth in Section 6 hereof.
- 3) determine priorities in the grant of licences, privileges, facilitations and preferential treatments.
- 4) issue all the necessary directives for the proper implementation of this Act.
- 5) any other functions conferred upon the National Investment Committee by this Act or the Chairman.

**CHAPTER SIX
MISCELLANEOUS PROVISIONS**

Section 31. Settlement of Disputes.

- 1) If a national or foreign investor obtains any privileges, facilitations, preferential treatments or guarantees under this Act, it shall be deemed a consent by him/her to submit to arbitration any legal dispute arising in accordance with the provisions of subsections (2) and (3) of this section; provided that the New Sudan shall be the place of arbitration and the CANS shall make available all the facilities that may be required for the arbitration.
- 2) The provisions of chapter 4 of part VI of the Civil Procedure Act, 2003, relating to arbitration, shall apply to every legal dispute arising directly from investment of national capital in any project.
- 3) The provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965, shall apply in case of legal disputes arising directly out of the investment to which the provisions of that Convention applies.

Section 32. Regulations.

- 1) The National Investment Committee may make regulations and orders necessary for efficient and effective implementation of the provisions of this Act.
- 2) Without prejudice to the generality of the foregoing subsection, such regulations and orders may provide for the following:-
 - (i) prescribe the procedure by which applications may be submitted for grant of licences, privileges, facilitations and preferential treatments and the fees payable therein;

- (ii) the minimum number of projects upon which the provisions of this Act shall apply and any other exceptional cases;
- (iii) prescribe rules relating to supervision, control and follow up of progress of projects licensed under this Act;
- (iv) any other issues that may help in the proper implementation of the provisions of this Act.

Given under my hand this _____ day of _____ in the year 2004, A.D.

**Dr. John Garang de Mabior
Chairman
SPLM/CANS**