

## South Sudan

### The Investment Promotion Act, 2009 (2009)

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# Contents

**Chapter I. Preliminary provisions**

**Chapter II. Establishment, objectives and functions of the investment authority**

**Chapter III. Governance of the investment authority**

**Chapter V. Financing of the investment authority**

**Chapter VIII. Investment incentives**

**Chapter IX. Investment guarantees**

**Schedules**

First schedule. The investment priority areas

Second schedule. Benefits and incentives

Third schedule. Priority businesses

# **The Investment Promotion Act, 2009**

In accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005; the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following:

# Chapter I. Preliminary provisions

## Article 1. Title and Commencement

This Act shall be cited as "The Investment Promotion Act, 2009" and shall come into force on the date of its signature by the President.

## Article 2. Repeal and Savings

- 1) The Investment Act, 2004 and the Presidential Decree No 124 of 2006 and any provisions of existing legislation in force in Southern Sudan which are governed by this Act, are hereby repealed or cease to operate in Southern Sudan provided that, all proceedings, orders and regulations taken or made there under, except to the extent they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.
- 2) Notwithstanding the provisions of this Act, all the licences, privileges, facilitations or guarantees in force, issued or granted under the repealed or ceased to operate laws or any agreement, shall be valid and operational and shall be deemed to have been granted under this Act, until they are rescinded under the provisions of this Act.
- 3) A person appointed to any office under or by virtue of the repealed Investment Act, 2004 or the Presidential Decree No 124 of 2006 shall be taken to have been appointed to that office under or by virtue of this Act.
- 4) The mention of particular matters in this section shall be without prejudice to the general application of the provisions of the Interpretation of Laws and General Provision Act, 2009 which relate to the effect of repeals.

## Article 3. Purpose

The Purpose of this Act is to provide for the promotion and facilitation of investment in Southern Sudan and the creation of the administrative, operational and government framework of the Southern Sudan Investment Authority.

## Article 4. Authority and Application

- 1) This Act is provided for in accordance with the provision of Articles 32(2) and 55 of the Interim Constitution of Southern Sudan, 2005, which grants the Government of Southern Sudan the authority over matters of commerce, trade and commercial regulations and to engage in the types of activities provided for in this Act.
- 2) The provisions of this Act shall apply to all investments in Southern Sudan.
- 3) Notwithstanding the provision of subsection (2) above, specialized legislation may be enacted to apply to specialized sectors of the economy.

## Article 5. Definitions

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

"Board" means the Board of Directors of Southern Sudan Investments Authority established under section 9 herein;

"business organization" means any organization established under the law applicable in Southern Sudan or recognized by the laws of Southern Sudan for the purpose of carrying on a lawful business;

"capital" means all cash contributions, intellectual property rights, plant, machinery, equipment, buildings, spare parts, raw materials and any other business assets;

"Chief Registrar" means the Chief Registrar of Companies, Businesses, Non-Governmental Organizations, Societies and Association;

"Court" means a court of competent jurisdiction;

"Council of Ministers" means the Council of Ministers of the Government of Southern Sudan;

"direct investment" means investment made to acquire an equity interest in an enterprise operating in Southern Sudan;

"domestic business organization" means a business organization that is owned by the national;

"enterprise" means an industry, company, project, undertaking or business to which this Act applies or an expansion of that industry, company, project, undertaking or business or any part thereof;

"equity" means the owners' interest in a business organization;

"expropriation" means the nationalization, condemnation, requisition, excessive or repetitive tax or regulatory measures which have a confiscatory effect, either alone or in the aggregate, of an investment, by the Government;

"foreign direct investment" means an investment where the investor is not a national as defined in this Act and has majority shares, financing, managerial, administrative and technical personnel in an enterprise;

"foreign investor" means any natural or juridical person who is a resident or a citizen of a foreign country, any legal entity that was founded and registered under the law of a foreign country or was founded under the law applicable in Southern Sudan with a legal address or principal place of business in a foreign country;

"foreign loan" means a loan obtained from outside Southern Sudan and denominated in any currency other than the currency of Sudan;

"freely convertible currency" means any currency designed as such by the International Monetary Fund;

"Government" means the Government of Southern Sudan (GOSS);

"incentives" means fiscal benefits, facilities, entitlements and exemptions conferred on an enterprise to which this Act applies for the purpose of promoting growth and development of Southern Sudan;

"indirect investment" means any act or contract whereby an investor makes a contribution whether tangible or intangible, to an enterprise in Southern Sudan without obtaining an equity interest in the enterprise but is entitled to returns based on profits generated by the enterprise;

"intellectual property rights" means a category of intangible rights protecting commercially valuable products of the human intellect and includes trademarks, copyrights, patent rights, publicity rights, moral rights and rights against unfair competition;

"Investment Authority" means the Southern Sudan Investment Authority established under section 6 herein;

"investment" includes national, foreign, direct and indirect investments and portfolio investment;

"investor" means any person or juridical person with capital with the sole interest of entering into business enterprise or enterprises as defined by the Authority;

"Minister "means the GoSS Minister of Finance and Economic Planning;

"national" mean any citizen of Southern Sudan or any company, partnership, association or body, whether corporate or non corporate in which the majority capital or financial interest is owned by citizens of Southern Sudan and includes a statutory corporation;

"national treatment" means, with respect to all the laws, regulations and administrative instructions, that foreign investments in Southern Sudan shall be treated on same favorable conditions similar to those of domestic investments;

"strategic list" means the list of enterprises that are partially or wholly excluded from foreign investment as published by the Board of Directors of the Investment Authority from time to time with the approval of the Council of Ministers and Sothern Sudan Legislative Assembly;

"own" means the holding of any proprietary interest in an enterprise;

"person "means a natural or a juridical person;

"President "means the President of the Government of Southern Sudan; and

"resident" means any person who is ordinarily resident or domiciled in Southern Sudan notwithstanding his or her citizenship, or any legal entity that was founded and registered under the laws of Southern Sudan with a registered physical address or principal place of business in Southern Sudan.

## **Chapter II. Establishment, objectives and functions of the investment authority**

### **Article 6. Establishment of the Investment Authority**

1) There shall be established a body corporate to be known as the Southern Sudan Investment Authority, hereinafter referred to as "the Authority"

2) The Authority shall have perpetual successions and a common seal and shall be capable in its corporate name of —

- a. suing and being sued;
- b. taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
- c. entering into any contract or transaction; and
- d. doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

### **Article 7. Objectives of the Authority**

1) The objects of the Authority shall be to encourage and promote domestic and foreign investments in Southern Sudan, in order to —

- a. effectively strengthen and diversify the economy of Southern Sudan;

- b. promote surplus production, economic growth and development, realize self-sufficiency and creation of surplus for export;
- c. generate and regulate employment, directly or indirectly for Southern Sudanese through multiplier effect;
- d. contribute towards the realization of economic co-operation and integration with regional and international communities;
- e. regulate and contribute towards poverty eradication; and
- f. promote and develop sustainable utilization of natural resources of Southern Sudan.

2) The Authority shall be the Government agency responsible for promotion of investments in Southern Sudan and shall facilitate all investment activities to which this Act applies.

#### **Article 8. Function of the Authority.**

The Authority shall have the following functions —

- a. actively promote investments into Southern Sudan, and shall —
  - i. initiate and support measures that will enhance the investment climate for both national and non-national enterprises and persons;
  - ii. collect, collate, analyze and efficiently disseminate information about investment opportunities and sources of investment capital, incentives available to investors and the investment climate;
  - iii. keep records of all enterprises to which this Act is applicable;
  - iv. initiate, organize and develop image-building activities to represent Southern Sudan as an ideal investment destination and engage in such other promotional activities for investments;
  - v. provide advice to the Government on investment policy in general, and where appropriate, focus economic sectors for investment encouragement; and
  - vi. promote decentralization of investment activities in accordance with the development policies of the Government of Southern Sudan;
- b. provide facilitation services to investors interested to invest in Southern Sudan, and shall —
  - i. assist investors by providing support services, including assistance to procure authorizations and permits required for the establishment and operation of enterprises; and
  - ii. facilitate and coordinate between public and private sector on investment related matters; and
- c. receive and process applications for investment certificates.

## **Chapter III. Governance of the investment authority**

#### **Article 9. Board of Directors**

- 1) The governing body of the Authority shall be the Board of Directors, hereinafter called "the Board" and shall be responsible for the discharge of the functions and duties of the Authority.
- 2) The Board shall also provide such guidance and advice as will ensure the efficient implementation of the functions of the Authority and enhance its overall performance.
- 3) The Board shall comprise of —
  - a. Minister of Finance and Economic Planning, Chairperson;

- b. Minister of Commerce and Industry, Deputy Chairperson;
- c. Minister of Legal Affairs and Constitution Development, member;
- d. Minister of Energy and Mining, member;
- e. Minister of Housing and Physical Planning, member;
- f. Minister of Agriculture and Forestry, member;
- g. President, Bank of Southern Sudan, member;
- h. Chairperson, Southern Sudan Land Commission, member;
- i. Chairperson, Southern Sudan Chamber of Commerce, Industry and Agriculture, member;
- j. Head of the Faculty of Economics, University of Juba, member;
- k. two Women to be appointed by the President (in case there are no women members in the Board), members; and
- l. the Secretary General of the Investment Authority, Secretary and Ex-Official member.

#### **Article 10. Loss of Membership**

- 1) Membership of the Board shall be lost on any of the following grounds —
  - a. loss of office as it entitles a member for appointment to the Board;
  - b. inability to perform the functions of his or her office by reason of physical disability or mental infirmity based on official medical reports;
  - c. proven gross misconduct by a member of the Board;
  - d. conviction for an offence involving fraud or dishonesty;
  - e. resignation; or
  - f. death.
- 2) Where a position falls vacant in the Board in accordance with the provision of sub-section (1) above, the President shall appoint his or her replacement within one month from the date of the vacancy.
- 3) Where a person ceases to be a member of the Board under the circumstances specified in subsection (1) above —
  - a. the members of the Board shall, where the person is the Chairperson and Deputy Chairperson, elect one of their member to act as Chairperson until such time as another person is appointed in his or her seat according to the process prescribed in this Act for appointment of Board members;
  - b. in the case of any other member, the Chairperson or Acting Chairperson shall by notice to the Minister, initiate the process for the President to appoint another member of the Board according to the process provided in this Act for appointment of Board members; and
  - c. a person appointed under section 9(3) (k) shall hold office for a term of four years and shall be eligible for reappointment for one additional term.

#### **Article 11. Functions of the Board of Directors**

- 1) Notwithstanding the provision of sub-section (1) and (2) of section 9 above, the Board of Directors shall have the following functions —

- a. to advise the Government of Southern Sudan and its agencies on ways to increase investments and economic growth in Southern Sudan; and
  - b. to promote cooperation between the public and private sectors in the formulation and implementation of government policies relating to the economy and investment.
- 2) In carrying out its functions under sub-section (1) above, the Board shall —
- a. monitor the economic environment to identify impediments to investment and economic growth and to propose incentives to promote investment and economic growth;
  - b. monitor economic development in Southern Sudan to identify areas that may not be benefiting from economic development; and
  - c. consult with persons from both public and private sectors to obtain views and suggestions for promoting investment and economic development;
  - d. determine policy for giving effect to the objectives and purpose of the Investment Authority and this Act, including but not limited to —
    - i. reviewing, advising on, revising and adopting a strategy for promoting domestic and foreign investment;
    - ii. reviewing, advising on, revising and adopting such investment promotion operating and marketing plans as may be proposed by the Secretary General of the Authority;
    - iii. submitting written statement to the Government enumerating obstacles relating to investment activities and suggesting steps which may be taken in order to remove such obstacles and fostering effective linkages between the public and private sectors to underpin private sector reform; and
    - iv. notwithstanding the provisions in the Second Schedule, determine from time to time the schedule of incentives for the promotion of investment and eligibility criteria for such incentives.

#### **Article 12. Meeting of the Board**

- 1) The Board shall hold its meetings on such dates and at such time and place as it may determine, but shall meet at least quarterly.
- 2) The Chairperson shall preside at all meetings of the Board and in his or her absence, the Deputy Chairperson shall preside, and in the absence of both, the members present shall elect one of their members to preside.
- 3) The quorum for meetings of the Board shall be seven members.
- 4) Each member of the Board shall have one vote and in case of a tie, the Chairperson shall have a casting vote.
- 5) The Board may co-opt any person as an advisor at a meeting of the Board, except that a person so co-opted shall have no right to vote on any matter before the Board for decision.
- 6) Except as otherwise expressly provided by this Act, the Board shall determine the procedure for its meetings.

#### **Article 13. Powers and Conduct of Business of the Board.**

- 1) In the discharge of its functions under this Act, the Board may, without prejudice to the generality of the objectives of the Investment Authority stipulated in section 7 herein, appoint committees comprising members of the Board or non-members or both, and may assign them such functions as the Board may determine except that a committee entirely of non-members may only advise the Board.



2) A member of the Board, who has any interest, direct or indirect, in any matter to be considered by the Board, shall disclose the nature of his or her interest to the Board and such disclosure shall be recorded in the minutes of the Board and that member shall not take part in any deliberations or decision of the Board relating to that matter.

3) Any member, who contravenes the provisions of subsection (2) above, commits an offence and shall be liable on conviction to removal from Board.

#### Chapter IV. Management of the investment authority

##### **Article 14. Secretariat of the Authority**

1) There shall be established a Secretariat in the Investment Authority which shall be responsible for the administration and implementation of programmes of the Authority.

2) The organizational structure of the Secretariat shall be determined by the Board.

3) The Secretariat of the Authority shall operate a "One Stop Shop" as provide for in Section 41 of this Act.

##### **Article 15. Secretary General of the Authority**

1) The President shall, on the recommendation of the Board, appoint a Secretary General, who shall be responsible for the day-to-day administration of the Authority and the implementation of the decisions of the Board.

2) The Secretary General shall be responsible for —

a. implementation of the policies and programmes of the Authority;

b. supervision and direction of staff of the Authority;

c. undertaking research to determine the industry competitiveness of Southern Sudan and propose strategies to enhance Southern Sudan as an investment destination;

d. proposing for the Board's approval, operating and marketing plans for investment promotion and facilitation;

e. performing the duties of the Secretary to the Board, including preparation of decisions of the Board; and

f. performing such other functions and duties as may be determined by the Board.

3) The Board shall ensure that the Secretary General has appropriate qualifications including but not limited to —

a. post-graduate qualification in business administration, economics, law, political science or other relevant areas;

b. not less than ten to fifteen years of experience in senior executive positions in business, manufacturing, private banking, marketing or sales;

c. excellent knowledge of the private sector in Southern Sudan;

d. excellent public relations; and

e. strong business orientation and proven experience in managing and motivating multidisciplinary teams of professionals.

4) The Secretary General shall be removed by the President, on the recommendation of the Board.

##### **Article 16. Staff of the Authority**

1) The Secretary General shall be assisted in his or her function and duties by a technical team which shall comprise of full time specialists with knowledge and experience on industry competitiveness and investment generation who may be recruited from Government ministries and technical departments or private sector and who shall be able to render to or procure necessary advisory services for prospective and actual investors.

2) Appointment to the technical team shall be made by the Board in consultation with the relevant authorities.

3) Members of the technical team shall disclose any interest related to any matter, which is the subject to discussion by the technical team and shall not participate in deliberations relating to the matter.

4) The Board may on the recommendation of the Secretary General, appoint such other officers and employees as the Authority may require for the effective implementation of its functions.

5) The Secretary General may in consultation with the Board, engage such consultants and advisors as he or she may require for the efficient discharge of the functions of the Authority.

## **Chapter V. Financing of the investment authority**

### **Article 17. Expenses and Funds of the Authority**

1) The Authority shall be funded and financed by —

a. such sums as shall be appropriated annually by the Southern Sudan Legislative Assembly for the Authority's activities; and

b. such other sums and assets as may vest in or accrue to the Authority, whether in the course of discharge of its functions or otherwise.

2) The Government shall ensure that the Authority is adequately resourced for the efficient discharge of its functions under this Act.

3) The Authority may levy such fees and charges for its services as the Board may determine.

4) All moneys received by the Authority under sub-section (3) above shall be paid into the Authority's bank account in the Bank of Southern Sudan or any other commercial bank as shall be determined by the Board.

### **Article 18. Financial Accounting**

1) The Authority shall —

a. keep proper books of accounts and proper records in relation to the accounts and shall prepare at the end of each financial year within a period of three (3) months after the financial year, a statement of its accounts in such form as audit rules for statutory bodies require;

b. in every respect, comply with such laws as they exist for public finance management and procurement for statutory bodies; and

c. notwithstanding the provision of subsection (2) below, at the end of every financial year, produce, publish and circulate a report on, its activities during the financial year, within three (3) months.

2) The books of accounts of the Authority shall each year be audited by the Auditor General or an external auditor approved by the Auditor General and the report on the audit shall be submitted to the Assembly.

### **Article 19. Financial Year**

The financial year of the Authority shall be the same as the financial of the Government.

## **Article 20. Annual Report**

- 1) The Board shall within two months after the receipt of the Auditor's report, submit to the President a report on the accounts, activities and operations of the Authority during the preceding year.
- 2) Annual report of the Authority shall include —
  - a. a copy of the audited accounts of the Authority together with the audit report on it; and
  - b. such other information as the President may require.
- 3) The President shall, through a Minister designated by him or her, present to the Sothern Sudan Legislative Assembly, annual report on the activities and operations of the Authority.

Chapter VI. Investment certificates — application and issuance

## **Article 21. Applications**

- 1) A national investor shall apply to the Authority for an investment certificate.
- 2) A foreign investor who intends to invest in Southern Sudan shall apply to the Authority for the investment certificate.
- 3) An application for an investment certificate shall be in the prescribed form.
- 4) The Authority may request clarifications and /or additional information.

## **Article 22. Entitlement to Certificate**

- 1) The holder of an investment certificate shall be entitled to incentives and benefits under this Act.
- 2) An applicant shall be entitled to an investment certificate if —
  - a. the applicant satisfies the conditions of grant of a certificate of investment as shall be prescribed in the regulations; and
  - b. the investment and the activity related to the investment are lawful and beneficial to the people of Southern Sudan.
- 3) In determining whether an investment and the activity related to the investment are beneficial to Southern Sudan for the purpose of subsection (2) (b) above, the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraph (a), (b) and (c) and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h) below —
  - a. creation of employment for Southern Sudanese;
  - b. acquisitions of new skills and or technology for Southern Sudanese;
  - c. contribution to tax revenues or other Government revenues;
  - d. a transfer of technology to Sothern Sudan;
  - e. an increase in foreign exchange, whether through exports or imports substitution;
  - f. production and utilization of domestic raw materials, supplies and services;
  - g. adoption of value addition in the processing of local, environmental, natural and agricultural resources using forward and backward linkages strategy;
  - h. development of information technology for utilization, promotion, development and implementation, information and communication technology;

- i. contribution to the socio-economic and cultural amenities of the local communities e.g. health centers, schools, feeder roads, water supply, sports, cultural events; and
- j. any other factors that the Authority considers beneficial to Southern Sudan.

### **Article 23. Procedures for Consideration of Application**

In considering grant of an investment certificate, the Authority shall take into account the investment priority areas provided in the First Schedule herein.

### **Article 24. Issue of Certificate**

- 1) If the Authority decides to issue an investment certificate, it shall issue the certificate on the date the applicant requests.
- 2) The Authority may issue an investment certificate in the name of a corporation established by the applicant for the purposes of the investment or in the name of any other business to be used for the purpose of the investment.
- 3) A foreign investor shall not invest in Southern Sudan unless that foreign investor has been issued with an investment certificate.
- 4) A national investor who does not hold an investment certificate shall register the investment with the Authority.

### **Article 25. Conditions of Certificate**

An investment certificate shall be subject to —

- a. such conditions as are prescribed in the regulations; and
- b. such conditions as the Authority may specify at the time A certificate is issued.

### **Article 26. Transfer**

- 1) An investment certificate may be transferred only with the written approval of the Authority.
- 2) The transfer of an investment certificate is subject to any restrictions prescribed in the investment certificate provided it does not breach those conditions.

### **Article 27. Amendment**

At the request of the holder of the certificate, the Authority may amend an investment certificate subject to any restrictions prescribed in the regulations.

### **Article 28. Revocation**

- 1) The Authority may revoke an investment certificate on the following grounds —
  - a. that the certificate was issued on the basis of incorrect information given by the applicant for the certificate;
  - b. that the investment certificate was obtained by fraud, or
  - c. that a condition of the investment certificate was breached.
- 2) If the Authority proposes to revoke an investment certificate, the Authority shall give the holder of the investment certificate at least thirty days written notice of the grounds for the proposed revocation and shall give the holder an opportunity to make representations as to why the investment certificate should not be revoked.

### **Article 29. Review of Decision of Authority**

- 1) A person who applied for an investment certificate or a person who is or was a holder of an investment certificate may request the Minister to appoint a panel to review a decision of the Authority relating to the application or certificate.

- 2) Upon receiving a request under subsection (1), the Minister shall appoint a panel consisting of —
- a. a chairman who shall be an advocate of at least ten years standing; and
  - b. two other members each of whom shall be a person who is experienced in law, economics or commerce.
- 3) After conducting its review the panel may do any one or more of the following —
- a. confirm, vary or set aside the decision, or appeal;
  - b. direct that the Authority reconsider in accordance with such directions as the panel may make; and
  - c. make an order as to the payment of costs.
- 4) The Minister may make rules governing the procedure of panels under this section.
- 5) Subject to any rules made by the Minister, a panel may govern its own procedure.
- 6) A panel shall have the same powers as a court to make orders to secure the attendance of persons, for the production of documents or for the investigation and punishment of contempt.
- 7) The Minister shall appoint a secretary to the panel and such other staff as are necessary for the proper discharge of the functions of the panel.
- 8) The members of a panel shall be paid such allowances and expenses as are determined by the Minister.
- 9) The expenses of the panel, including the allowances and expenses of the members of the panel, shall be paid by the Government.

#### Chapter VII. Investment certificates — benefits

### **Article 30. Entitlement to Certain Licenses**

- 1) An investment certificate shall set out the licenses that are necessary to the proposed investment and which the holder of the investment certificate would, on application, be legally entitled.
- 2) Upon the issuance of an investment certificate, the following apply with respect to each license set out in the certificate under subsection (1) —
- a. the holder of the investment certificate is entitled to have the license issued, subject to any conditions set out in the regulations or in the investment certificate, upon application made within twelve months after the investment certificate is issued and upon payment of the applicable fee, if any; and
  - b. until the license is issued or twelve months elapse after the investment certificate is issued, subject to any conditions set out in the regulations or in the investment certificate and subject to the requirement to pay fees under subsection (3) below.
- 3) The holder of an investment certificate shall pay any fees that would be payable under the relevant legislation for the licenses set out in the investment certificate issued, and such fees shall be paid within six months after the issue of the investment certificate.
- 4) The entitlement to licenses under subsection (2)(a) is for the initial issue of such licenses only and following that initial issue the laws under which the licenses are issued apply in the same way as they apply to all licenses, including, for greater certainty, with respect to the revocation or renewal of the licenses.

5) The Authority shall facilitate the issue of licenses to which the holder of an investment certificate is entitled under this section.

### **Article 31. Entitlement to Entry Permits for Expatriates**

1) The holder of an investment certificate is entitled to entry permits(s) or work permit under the Immigration Act of the Republic of the Sudan.

2) The initial issue of a permit under this section shall be for a two year period.

3) The holder of the investment certificate is entitled to have a permit under this section reissued upon its expiry or issued to a different employee, owner, shareholder or partner provided it does not breach subsection (2) above.

4) The holder of the investment certificate is not entitled to have a permit issued to a person who is a prohibited immigrant within the meaning of the Immigration Act.

5) A permit under this section is subject to a condition that the holder of the permit complies with the laws of Southern Sudan.

6) For each permit under subsection (1) the holder of the investment certificate is entitled to the issue of —

a. a dependant's pass for each dependant of the person to whom the permit is issued; and

b. such re-entry permits as required in connection with the passes under (a) above.

7) Subsection (4) and (5) apply, with necessary modifications, with respect to passes or re-entry permits under subsection (6).

8) An entitlement to a permit or pass under this section is conditional upon —

a. application being made for the permit or pass;

b. the applicable fee, if any, being paid; and

c. any security deposit or bond required under the Immigration Act being paid or provided.

9) Notwithstanding subsection (8)(b), no fee is payable for the initial issue of a permit under subsection (8)(a) above.

10) If an entry described in subsection (8)(a) has already been issued to an employee of the holder of the investment certificate as of the time the investment certificate was issued, that permit shall be deemed to be one of the permits to which the holder of the certificate is entitled under subsection (8)(a).

11) If any entry permit described in subsection (8)(b) has already been issued to the holder of the investment certificate or an owner, shareholder or partner of the holder as of the time the investment certificate was issued, that permit shall be deemed to be one of the permits to which the holder of the certificate is entitled under subsection (8) (b).

12) The Authority shall facilitate the issue of permits and passes that the holder of the investment certificate is entitled to have issued under this section.

13) For greater certainty, nothing in this section limits the issue, under the Immigration Act, of other permits or passes in addition to those which the holder of an investment certificate is entitled to have been issued under this section.

## **Chapter VIII. Investment incentives**

### **Article 32. Benefits and Incentives**

- 1) Subject to the provisions of Section 40 of this Act, an enterprise shall be entitled to such benefits and incentives as are applicable to such enterprise as provided in the Second Schedule and this Act and any other law for the time being in force in Southern Sudan.
- 2) Notwithstanding the provision of subsection (1) above, for the purpose of promoting identified strategic or transformational investments, the technical team of the Authority may upon direction of the Board and in consultation with such appropriate Government agencies as the Board may determine, recommend to the Board to grant specific incentive packages including concessions, privileges and preferential treatment in addition to the incentives provided under this Act, tax and other laws for such a period as the Board may specify.
- 3) The Authority shall publish criteria for what shall constitute strategic and transformational investments before the award of any special incentives in terms of this section.
- 4) Any incentives awarded under subsection (2) above, shall be determined on the basis of eligibility criteria for such incentives approved by the Council of Ministers and published by the Authority.
- 5) The criteria referred to in subsection (3) and (4) above, shall be reviewed every two years or as the case may be in consultation with appropriate stakeholders.

## **Chapter IX. Investment guarantees**

### **Article 33. Prohibition of Discrimination**

- 1) Subject to such strategic list as may be published by the Board with the approval of the Council of Ministers from time to time, foreign investors may own, or control business organizations in any sector of the economy of Southern Sudan as domestic business organizations.
- 2) The Board may, in consultation with the appropriate Ministers, classify or declassify an activity as an activity reserved for nationals.
- 3) Amendment to the list of activities reserved for nationals made in accordance with the provision of this section shall be promulgated by way of a legislative instrument within ten (10) days of their adoption, and shall be published in the Government Gazette.
- 4) Without prejudice to the provisions of subsection (2) and (3) above, foreign investors, employees and workers, shall enjoy the same rights and be subject to the same duties and obligations applicable to nationals.
- 5) No official, agency, law or other legal authority shall discriminate against investors from a particular country or give special treatment to prospective foreign investors based upon their country of origin or nationality.
- 6) Foreign investors shall be subject to the same laws that apply to domestic business organizations, in particular —
  - a. any licenses or other permits for conducting specific business activities that are required of domestic business organizations shall be similarly required of foreign investments;
  - b. foreign investments shall maintain business books and records in accordance with the same accounting standards that apply to similar domestic business organizations;
  - c. foreign investments are subject to the same insurance requirements that apply to similar domestic business organizations; and
  - d. foreign investments shall be taxed in the same manner as similar domestic business organizations.

7) Without prejudice to the provisions of this section, section 42 and the Third Schedule herein, the Board shall facilitate, promote, encourage and protect the indigenous business and investments.

#### **Article 34. Guarantee against Expropriation**

- 1) Subject to the provisions of subsections (2) and (3) below —
  - a. no enterprise shall be nationalized or expropriated by the Government; and
  - b. no person who owns, whether wholly or in part, the capital of any enterprise shall be compelled by law to cede his or her interest in the capital to any other person.
- 2) There shall be no expropriation of any enterprise, to which this Act applies, by the Government unless the expropriation is in the national interest for a public purpose, which is the least burdensome means available to satisfy that overriding public purpose, is made on a non-discriminatory basis, in accordance with due process of law, and is under a law which makes provisions for —
  - a. payment of fair and adequate compensation; and
  - b. a right of access to the courts for the determination of the investor's interest or right and the amount compensation tot which he or she is entitled.
- 3) Any compensation payable under this section shall be paid without undue delay and authorization shall be given for its repatriation in freely convertible currency, where applicable.
- 4) The Government and the person whose property has been expropriated may determine fair market value of the expropriated property by other agreed means.

#### **Article 35. Protection of Intellectual Property Rights**

The Government shall protect the intellectual property rights of all persons and investors in Southern Sudan and shall enforce rights to trademarks, copyrights, patents and other 23 intellectual property rights in accordance with any related international conventions to which the Republic of the Sudan is a signatory.

#### **Article 36. Access to Public Information**

Investors shall have direct and open access to all laws and decisions of courts or other adjudicative bodies and to any public information, which has a national relationship to their investment interests.

#### **Article 37. Repatriation of Capital, Profits and Dividends**

- 1) Investors shall have an unrestricted right to use their investments and any incomes lawfully received there from for any lawful purpose and all proceeds of the operations of an enterprise may, subject to tax and other lawful obligations, be retained by the business organization, or disposed of in any lawful manner.
- 2) Subject to tax and other lawful obligations, an enterprise to which this Act applies shall be guaranteed unconditional transferability in and out of Southern Sudan through any authorized dealer bank in freely convertible currency of —
  - a. capital for investment;
  - b. payments in respect of loan servicing where foreign loans have been obtained; and
  - c. the remittance of proceeds, net of all taxes and other statutory obligations, in the event of sale or liquidation of the enterprise or any interest attributable to the investment.

#### **Article 38. Labour and Employment**



- 1) Employees of enterprises owned by foreign investors in Southern Sudan, regardless of nationality, shall be subject to the laws applicable in Southern Sudan and principles of equal pay for equal job.
- 2) Labour relations between enterprises owned by foreign investors and their employees may be regulated by their labour agreements, which agreements shall not establish standards lower than the mandatory requirements of the applicable law in Southern Sudan.
- 3) Without prejudice to the provisions of labour laws applicable in Southern Sudan, investors shall have the right to employ managers of any nationality in order to conduct their investment and business activities.
- 4) Investors shall have the right to employ non-managerial staff of any nationality, provided that Southern Sudanese citizens of similar qualification and experience shall be given preferences in recruitment.

#### **Article 39. Dispute Resolutions**

- 1) The courts of Southern Sudan shall have jurisdiction over the resolution of business disputes.
- 2) Notwithstanding the provisions of subsections (1) above, parties to an investment dispute may specify any arbitration or other dispute resolution mechanisms upon which they may agree, within or outside the courts.
- 3) Where a dispute rises between an investor and the Government in respect of an enterprise, all efforts shall be made to reach an amicable settlement.
- 4) Any dispute between an investor and the Government in respect of an enterprise to which this Act applies but not amicably settled may be submitted at the option of the aggrieved party to arbitration as follows —
  - a. in accordance with the rules and procedures for arbitration by the International Centre for the Settlement of Investment Disputes; or
  - b. in case of a foreign investor, within the frame work of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investors is a national, are parties; or
  - c. in accordance with any other national or international machinery for the settlement of investment disputes, agreed to by the parties.
- 5) Any arbitral award made in respect of arbitration proceeding conducted in terms of this section shall be final and bindings on the parties, without such a ward having to be made an order of the court and the parties shall give effect to such award forthwith.
- 6) Notwithstanding the provisions of subsections (5) above, a party in whose favour an award has been made shall be entitled to apply to the High Court for an order to compel the other party to comply with that award, and the High Court shall have the jurisdiction to grant such as order.

#### **Chapter X. Miscellaneous provisions**

#### **Article 40. Interaction with the Government of National Unity**

Before the investment Authority grants any exemption from payment of any of the Government of National Unity duties under this Act, the Government of Southern Sudan shall coordinate the tax competences at various levels of Government in accordance with paragraph 10 of Schedule B in the Interim Constitution of Southern Sudan (ICSS) as contained in the Comprehensive Peace Agreement (CPA).

#### **Article 41. Interaction with the Government of Southern Sudan**

a) All Government departments, agencies and other public authorities and institutions shall co-operate fully with the Authority in the performance of its functions under this Act.

b) The President may, on the advice of the Board, in writing, order the Chief Registrar, the Chief Immigration Officer and any head of a Government agency or department to deploy and station at the offices of the Investment Authority, public officers with such delegated power as may be specified in the order, and the heads of the said Government departments shall comply with the order.

#### **Article 42. Protection of Indigenous Communities and Investments**

Without prejudice to the provision of this Act, the Authority shall —

- a. protect the interest of the communities in whose areas investments shall take place; and
- b. ensure that indigenous enterprises and investments are promoted, encouraged and protected.

#### **Article 43. Regulations**

1) The Board may make and amend the Schedules and regulations as necessary for the efficient and effective implementations of the provisions of this Act.

2) Without prejudice to the generality of the provisions of subsection (1) above, such regulations may provide for the following —

- a. the procedure by which applications may be submitted for the grant of licenses, privileges or exemptions under this Act;
- b. the fees payable in respect of such licenses, privileges or exemptions, provided that such fees shall be payable to the Southern Sudan Consolidated Fund Account, in the Ministry of Finance and Economic Planning; and
- c. rules relating to supervision, control and reporting upon progress of projects licensed under this Act.

3) The Secretary General shall —

- a. make public all the regulations made by the Board and any amendments therein; and
- b. maintain, at the offices of the Authority, a complete and updated set of all such regulations for inspection by any interested party.

## **Schedules**

### **First schedule. The investment priority areas**

A) Investment in the following fields shall be deemed a priority of the Government of Southern Sudan.

1. a) Agriculture: food and cash crops, farm mechanization, seeds and agricultural tools industry, livestock and dairy development; fisheries and fish processing and preservations, and apiculture (bee-keeping).

b) Agro-business, textiles, leather industries and food processing such as flour milling, oil pressing mills, sugar processing, fruits and vegetable canning, meat and fish processing, animal feeds and fertilizers, abattoirs and hides (value addition).

2. Physical infrastructure such as roads and bridges, airports, sea/river ports, railways, manufactories, warehouses, wholesales and silos, sewer and water treatment plants, irrigation and drainage systems, real estate development industry, hydro-electric dams, reservoirs and water harvesting techniques.

3. Social infrastructure such as schools, hospitals, water services etc.
4. Mining, quarrying, energy, electricity, petroleum and gas industries.
5. Research on and mapping of natural resources for economic use.
6. Forestry, afforestation, reforestation and wood processing industry.
7. Medium to heavy manufacturing industries such as cement, mining, construction materials (tiles, zinc, steel, paints etc), electric and domestic appliances.
8. Transport, telecommunications, print and electronic media, and information communications technology.
9. Commercial banking, insurance, property management, and financial institutions.
10. Pharmaceuticals, chemicals, and medicinal and surgical industries.
11. Tourism attraction and hotel industry development.

B) In implementing priority areas identified in the First Schedule, the following types of projects favorable for priority areas shall be taken into consideration —

- a. Direct investment in the least developed areas of Southern Sudan.
- b. Import substitution and export promotions (surplus production).
- c. Integrated rural development.
- d. Employment creation to the citizens.
- e. Promotions of scientific and technological advancement.
- f. Joint venture/partnership enterprises where Southern Sudanese citizens have at least 30% stake.
- g. Re-investment of at least 20% of after —tax profits in Southern Sudan.

C) Environment Friendly Investment.

a) IN GENERAL: Notwithstanding any other provision or rule, and subject to the provisions of this directive, any company investing in Southern Sudan shall observe and implement environment friendly corporate rules and regulations for the following purposes —

- i. preservation of the top soil, surface and subterranean water, and river bank flora and fauna and ecosystem biodiversity;
- ii. redemption or repairing the land to the natural position after use or expiry of mining activities;
- iii. responsible solid waste management and disposal of trash, waste, toxic substances in land fills or recycling facilities, composting/decomposing sites;
- iv. responsible management of noise, clean air, clean water (ponds, rivers, streams and swamps/wetlands).

b) LIABILITY: Any investor who fails to design and implement environmentally friendly rules and regulations shall be guilty of an offense and liable of fines, payment of damages or remove or clean waste where applicable in accordance with the law.

## **Second schedule. Benefits and incentives**

1. The Tax Exemptions and Concessions.

a) The priority investments areas listed in the First Schedule shall, after registrations, enjoy tax exemptions and concessions in machinery and equipment, capital and net profits for a period that shall be determined by the Authority, and by which an investor has realized sufficient return on investment.

b) All agriculture imports (tools, equipment, machinery and tractors, pharmaceuticals, animal feeds, seeds etc) for boosting food and cash crops production shall be exempt from any duty and taxes for a period that shall be determined by law.

c) Investment with quicker rates of return shall have shorter period of enjoying tax concessions as shall be determined by law.

## 2. Fiscal Incentives.

Type of allowance: Initial allowance granted in first year of production.

Rate: 50%

Condition: Granted on cost base on plant and machinery for industries in relatively developed area.

Type of allowance: Initial allowance granted in the first year of production.

Rate: 75%

Condition: Granted on the cost base of plant and machinery for industries located in least developed areas.

Type of allowance: Start —up and development costs.

Rate: 25%

Condition: Granted on actual cost over the first four years in four equal installments for industries in relatively developed areas.

Type of allowance: Start —up and development costs.

Rate: 40%

Condition: Granted on actual cost over the first four years in four equal installments on least developed areas.

Type of allowance: Scientific research capital expenditure.

Rate: 100%

Condition: Granted on the first 3 years on actual cost of scientific research incurred during a year of income in the course of carrying on a business, the income of which is included in gross income must be undertaken in the development of the sector's business and declines thereafter to 25%.

Type of allowance: Training and Capacity Building Expenditure.

Rate: 100%

Condition: Granted on actual cost of training incurred during a year of income for the training or tertiary education of a citizen or permanent resident of Southern Sudan employed in the business by the employer (not exceeding 6 years in total).

Type of allowance: Mineral exploration and drilling expenditure

Rate: 100%

Condition: Granted on actual cost incurred in mineral exploration.

Expenditure of a capital nature incurred in searching for, discovering and testing, winning access to deposit of minerals in Southern Sudan.

Type of allowance: Initial allowance granted in the first year of use of an industrial building.

Rate: 20%

Condition: Granted on the cost base of an industrial building, (include tourism facilities like hotels and lodges and capital expenditure incurred on the extension of an existing industrial building but including commercial building).

Type of allowance: Repairs and minor capital equipment.

Rate: 100%

Condition: Granted on actual cost incurred in a year:

- i. expenditure on repair of property occupied or used for the business;
- ii. cost of minor capital equipment provided that the equipment was certified to have been newly acquired.

b) Deductible Annual Allowances.

Class 1

Rate: 25%

Condition: Computers and handling machinery and equipment.

Class 2

Rate: 20%

Condition: Light automobiles (buses with less than 30 seater or goods vehicles designed to carry or pull 7 or more tons); Construction and earth moving machinery and equipment.

Class 3

Rate: 20%

Condition: Productive equipment: heavy automobile (buses with 30 or more seater or goods, vehicles designed to carry or pull 7 or more tones ); specialized trucks, trailers, tractors, plant and machinery used in farming, manufacturing, drilling and mining operations.

Class 4

Rate: 40%

Condition: All other depreciable assets (railroad cars, locomotives and equipment, vessels, tugs and similar water transportation equipment, air craft, specialized public utility plant, equipment and machinery, office furniture, fixtures and equipment, etc).

Farming costs

Rate: 30%

Condition: Farm works (i.e. labor quarters, irrigation bumps, fertilizers and animal feeds, chicken incubators, immovable building and other works necessary for the farm).

c) Other Annual Depreciation Allowances.

Class: Industrial Building Allowance.

Rate: 10%

Condition: Cost base net of initial allowance /deduction on a straight —line basis per annum on qualifying industrial building (includes approved commercial building, hotels and hospitals).

Class: Intangible Assets

Rate: Variable and not exceeding 8%

Condition: Granted on cost of asset in equal annual installment over its useful life on condition that it has an ascertainable useful life and value e.g. leasehold, patents, royalties.

Class: Horticulture

Rate: 20%

Condition: Granted on actual cost in four equal installments. Cost must be incurred on acquisition of agro-processing industries, horticultural plant and/or on construction of a green house.

### 3. Access to Land for Investment

The Government of Southern Sudan and the Local Authorities shall provide land for investment in any of the priority areas mentioned in First Schedule. Notwithstanding any other provisions of the law, the following conditions shall be deemed included in the decisions on investment in the priority areas listed in the First Schedule:

- a. general investments in agriculture - other than forestry and paper wood - shall not exceed 30 years for a foreign investor subject to renewal by mutual consent by the parties;
- b. a foreign investor who wishes to invest in plantation forestry and depending on periods of harvest, shall not exceed 60 years subject to renewal by mutual consent by the parties;
- c. quarrying shall not exceed the life of the quarry and, subject to renewal of license, renegotiate favorable terms with the ministry concerned; and
- d. mining shall not exceed the lifespan of the mine, as defined in a concession agreement and subject to renewal of the license through favorable terms between the parties.

## **Third schedule. Priority businesses**

For the benefit of Southern Sudanese businesses - especially small business enterprise growth and guaranteeing business opportunities and employment to the Southern Sudanese citizens, the national investor shall be given priority in the businesses listed below:

1. Micro-enterprises.
2. Postal services.
3. Cars hire and taxi operations.
4. Public relations businesses.
5. Retail commerce.
6. Security services.
7. Cooperative services.

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