

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2008 Winter
Supp.

West Group
Publisher

To require the divestment, and prohibit the investment, of public funds in the stocks, securities, or other obligations of certain companies which do business with the Government of Sudan and to provide for the identification of companies doing business with the Government of Sudan.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Prohibition of the Investment of Public Funds in Certain Companies Doing Business with the Government of Sudan Act of 2007”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Active Business Operations” means all Business Operations that are not Inactive Business Operations.

(2) “Business Operations” means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) “Company” means any sole proprietorship, for-profit or nonprofit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for for-profit or nonprofit purposes.

(4) “Complicit” means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including preventing Darfur’s victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, or actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

(5) “Direct Holdings” in a company means all securities of that company held directly by the Public Fund or in an account or fund in which the Public Fund owns all shares or

interests.

(6) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan. The term “Government of Sudan” shall not include the regional government of southern Sudan.

(7) “Inactive Business Operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(8) “Indirect Holdings” in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which the Public Fund owns shares or interests together with other investors not subject to the provisions of this act.

(9) “Marginalized Populations Of Sudan” include the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan’s North-South civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) “Military Equipment” means:

(A) Weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

“(B) Supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) “Mineral Extraction Activities” include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, and facilitating such activities, including by providing supplies or services in support of such activities.

(12)(A) “Oil-Related Activities” include:

- (i) Owning rights to oil blocks;
- (ii) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil;
- (iii) Constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and
- (iv) Facilitating such activities, including by providing supplies or services in support of such activities.

(B) The mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.

(13) “Power Production Activities” means any Business Operations that involve

a project commissioned by the National Electricity Corporation of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, and facilitating such activities, including by providing supplies or services in support of such activities.

(14) “Public Fund” means the assets of the District of Columbia Retirement Board, the Board of Trustees in charge of the District of Columbia Retirement Board.

(15) “Scrutinized Company” means a company, other than a Social Development Company which is not complicit in the Darfur genocide, that meets the criteria set forth in any of the following subparagraphs:

(A)(i) The company has Business Operations that involve contracts with, or provision of supplies or services, to:

- (I) The Government of Sudan;
- (II) Companies in which the Government of Sudan has any direct or indirect equity share;
- (III) Government of Sudan-commissioned consortiums or projects; or
- (IV) Companies involved in Government of Sudan-commissioned consortiums or projects; and

(ii)(I)(aa) More than 10% of the company’s revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities;

(bb) Less than 75% of the company’s revenues or assets linked to Sudan involve contracts with, or provision of Oil-Related or Mineral Extracting products or services to, the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and

(cc) The company has failed to take Substantial Action; or

(II)(aa) More than 10% of the company’s revenues or assets linked to Sudan involve Power Production Activities;

(bb) Less than 75% of the company’s Power Production Activities include projects whose intent is to provide power or electricity to the Marginalized Populations Of Sudan; and

(cc) The company has failed to take Substantial Action;

(B) The company is complicit in the Darfur genocide;

(C) The company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, including, through post-sale

tracking of the equipment by the company, certification from a reputable and objective third party that the equipment is not being used by a party participating in armed conflict in Sudan, or sale of the equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

(16) “Scrutinized Companies List” means a list of Scrutinized Companies compiled in accordance with section 3.

(17) “Social Development Company” means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.

(18) “Substantial Action” means:

(A) Adopting, publicizing, and implementing a formal plan to cease Business Operations within one year and to refrain from any new Business Operations;

(B) Undertaking significant humanitarian efforts on behalf of one or more Marginalized Populations Of Sudan; or

(C) Through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

Sec. 3. Identification of companies.

(a) Within 90 days after the effective date of this act, the Public Fund shall make its best efforts to identify all Scrutinized Companies in which the Public Fund has Direct Holdings, Indirect Holdings, or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) Reviewing and relying, as appropriate in the Public Fund’s judgment, on publicly available information regarding companies with Business Operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the Public Fund that invest in companies with Business Operations in Sudan;

(3) Contacting other institutional investors that have divested from, or engaged with, companies that have Business Operations in Sudan.

(b) By the first meeting of the Public Fund following the 90-day period set forth in subsection (a) of this section, the Public Fund shall compile all Scrutinized companies identified into a Scrutinized Companies List.

(c) The Public Fund shall update the Scrutinized Companies List on a quarterly basis based on information from sources, including those listed in subsection (a) of this section.

Sec. 4. Required actions.

(a) Except as provided in subsections (c) and (d) of this section, during the period that a company on the scrutinized Company List has Active Business Operations, the Public Fund shall sell, redeem, divest, or withdraw all publicly-traded securities of the company according to the following schedule:

(1) At least 50% of the assets shall be removed from the Public Fund's assets under management by 6 months after the company's most recent appearance on the Scrutinized Companies List.

(2) All of such assets shall be removed from the Public Fund's assets under management within 12 months after the company's most recent appearance on the Scrutinized Companies List.

(b) Except as provided in subsections (c) and (d) of this section, the Public Fund shall not acquire securities of companies on the Scrutinized Companies List that have Active Business Operations.

(c) A company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall not be subject to the divestment or investment prohibition of subsections (a) and (b) of this section.

(d) Notwithstanding anything herein to the contrary, subsections (a) and (b) of this section shall not apply to Indirect Holdings in actively-managed investment funds; provided, that the Public Fund shall submit letters to the managers of actively-managed investment funds containing companies with Scrutinized Active Business Operations requesting that they consider removing such companies from the fund or create a similar actively-managed fund with Indirect Holdings devoid of such companies; provided further, that if the manager creates a similar fund, the Public Fund shall replace all applicable investments with investments in the similar fund in an expedited time period consistent with prudent investing standards. For the purposes of this section, private equity funds shall be deemed to be actively-managed investment funds.

Sec. 5. Reporting.

(a) The Public Fund shall transmit a publicly-available report to the Council and the Mayor that includes the Scrutinized Companies List within 30 days after the list is created.

(b) Annually thereafter, the Public Fund shall transmit a publicly-available report to the Council and the Mayor and send a copy of the report to the United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes:

(1) All investments sold, redeemed, divested, or withdrawn in compliance with section 4(a);

(2) All prohibited investments under section 4(b); and

(3) Any progress made under section 4(d).

Sec. 6. Other legal obligations.

With respect to actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act, the Public Fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the Public Fund's securities portfolios.

Sec. 7. Reinvestment in certain companies with Active Business Operations.

(a)(1) Notwithstanding anything herein to the contrary, the Public Fund shall be permitted to cease divesting from certain Scrutinized Companies pursuant to section 4(b) or reinvest in certain Scrutinized Companies from which it divested pursuant to section 4(a) if clear and convincing evidence shows that the value for all assets under management by the Public Fund becomes equal to or less than .50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund assuming no divestment for any company had occurred under section 4(a).

(2) Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in paragraph (1) of this subsection.

(b) For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this section, the Public Fund shall provide a written report to the Council and the Mayor in advance of initial reinvestment, updated semiannually thereafter, as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies with Active Business Operations.

(c) This section shall not apply to reinvestment in companies on the ground that they have ceased to have Active Business Operations.

Sec. 8. Enforcement.

The Mayor shall enforce this act and may bring such legal action as is necessary to do so.

Sec. 9. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia