

11A.243 INVESTMENT IN SUDAN.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following items have the meanings given them in this subdivision.

(b) "Active business operations" means all business operations that are not inactive business operations.

(c) "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.

(d) "Company" means any sole proprietorship, 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 profit-making purposes.

(e) "Complicit" means taking actions during any preceding 20-month period that have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(f) "Direct holdings" in a company means all securities of that company held directly by the State Board of Investment or in an account or fund in which the State Board of Investment owns all shares or interests.

(g) "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, and does not include the regional government of southern Sudan.

(h) "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.

(i) "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 State Board of Investment, in which the State Board of Investment owns shares or interests together with other investors not subject to the provisions of this section.

(j) "Marginalized populations of Sudan" include, but are not limited to, 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.

(k) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) "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, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(m) "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including the provision of supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, 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, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(o) "Scrutinized company" means any company that meets the criteria in clause (1), (2), or (3):

(1) 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

(A) more than ten percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities; less than 75 percent 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 the company has failed to take substantial action; or

(B) more than ten percent of the company's revenues or assets linked to Sudan involve power production activities; less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action;

- (2) the company is complicit in the Darfur genocide; or

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

Notwithstanding any other provision to the contrary in this section, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(p) "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.

(q) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity that has been evaluated and certified by an independent third party to be in substantial relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

Subd. 2. Identification of companies. (a) Within 90 days following May 23, 2007, the State Board of Investment shall make its best efforts to identify all scrutinized companies in which the State Board of Investment has direct or 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 State Board of Investment'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 contracting with the State Board of Investment who invest in companies with business operations in Sudan; or

(3) contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(b) At the first meeting of the State Board of Investment after it has completed the requirements of paragraph (a), the State Board of Investment shall assemble a list of scrutinized companies.

(c) The State Board of Investment shall update the scrutinized companies list each quarter based on continuing information, including, but not limited to, information from sources identified in paragraph (a).

Subd. 3. **Engagement of scrutinized companies.** The State Board of Investment shall use the following procedure for companies on the scrutinized companies list:

(a) After completing the list required under subdivision 2, paragraph (a), the State Board of Investment shall immediately identify the companies on the list in which the State Board of Investment owns direct or indirect holdings.

(b) For each company identified in paragraph (a) with only inactive business operations, the State Board of Investment shall send a written notice to the company with information about this section and encourage it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The State Board of Investment shall continue such correspondence on a semiannual basis.

(c) For each company newly identified in paragraph (a) with active business operations, the State Board of Investment shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the State Board of Investment. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the State Board of Investment.

(d) If, within 90 days following the State Board of Investment's first engagement with a company under paragraph (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the State Board of Investment's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to all provisions of this section relating to inactive business operations.

Subd. 4. **Divestment.** (a) If, after 90 days following the State Board of Investment's first engagement with a company under subdivision 3, paragraph (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the State Board of Investment shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in subdivisions 5 to 11, according to the following schedule:

(1) at least 50 percent of the assets in the company shall be removed from the State Board of Investment's assets under management by nine months after the company's most recent appearance on the scrutinized companies list; and

(2) 100 percent of the assets in the company shall be removed from the State Board of Investment's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(b) If a company that ceased scrutinized active business operations following engagement under subdivision 3, paragraph (c), resumes such operations, paragraph (a) shall immediately apply to the company and the State Board of Investment shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

Subd. 5. **Prohibition on acquisition of certain securities.** At no time shall the State Board of Investment acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in this section.

Subd. 6. **Exemption.** If the federal government affirmatively excludes a company from its present or any future federal sanctions regime relating to Sudan, the company is exempt from the divestment and investment requirements of subdivisions 4 and 5.

Subd. 7. **Excluded securities.** Notwithstanding any other provision in this section to the contrary, subdivisions 4 and 5 do not apply to indirect holdings in actively managed investment funds. The State Board of Investment shall submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting the managers to consider removing such companies from the fund or to create a similar actively managed fund with indirect holdings that do not include the companies. If a manager creates a similar fund, the State Board of Investment shall promptly replace all applicable investments with investments in the similar fund consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

Subd. 8. **Reporting.** (a) Within 30 days after creating the scrutinized companies list, the State Board of Investment shall submit the list to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment.

(b) By January 15, 2008, and on January 15 of each year thereafter, the State Board of Investment shall submit a report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment and send a copy of that report to the United States Presidential Special Envoy to Sudan or the appropriate designee or successor for the envoy. The report must include:

(1) a summary of correspondence with companies engaged by the State Board of Investment under subdivision 3, paragraphs (b) and (c);

(2) a list of all investments sold, redeemed, divested, or withdrawn in compliance with subdivision 4;

(3) a list of all prohibited investments under subdivision 5; and

(4) a description of any progress made under subdivision 7.

Subd. 9. **Expiration.** This section shall expire upon the occurrence of any of the following:

(1) the Congress or president of the United States declares that the Darfur genocide has been halted for at least 12 months;

(2) the United States revokes all sanctions imposed against the government of Sudan;

(3) the Congress or president of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

(4) the Congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

Subd. 10. **Other legal obligations.** The State Board of Investment is exempt from any statutory or common law obligations that conflict with actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, including any obligations regarding the choice of asset managers, investment funds, or investments for the State Board of Investment's securities portfolios.

Subd. 11. Reinvestment in certain companies with scrutinized active business operations.

Notwithstanding any provision of this section to the contrary, the State Board of Investment shall be permitted to cease divesting from certain scrutinized companies under subdivision 4 or to reinvest in certain scrutinized companies from which it divested under subdivision 4 if clear and convincing evidence shows that the value for all assets under management by the State Board of Investment is equal to or less than 99.5 percent (50 basis points) of the hypothetical value of all assets under management by the State Board of Investment without any divestment for any company under subdivision 4. Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this subdivision shall be strictly limited to the minimum steps necessary to avoid the contingency. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this subdivision, the State Board of Investment shall provide a written report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment 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 scrutinized active business operations. This subdivision does not apply to reinvestment in companies because they have ceased scrutinized active business operations.

History: 2007 c 117 s 1